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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-fourth session

SUMMARY RECORD OF THE 1316th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 9 March 1999, at 10 a.m.

Chairman: Mr. ABOUL-NASR

later: Mr. SHERIFIS

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Tenth and eleventh periodic reports of Italy (CERD/C/317/Add.1) (continued)

1. At the invitation of the Chairman, the delegation of Italy resumed their places at the Committee table.

2. Mr. GARVALOV thanked the Italian delegation, whose oral presentation and highly informative report he had greatly appreciated. However, no information concerning the demographic composition of Italian society could be found therein. On the other hand, Minority Rights Group International had indicated in its World Directory that the main minority groups living in Italy were Sardinians (1.6 million), Friulians (600,000), South Tyrolese German-speakers (303,000), Roma/gypsies (90,000-110,000), Slovenes (100,000), Franco-Provençal-speaking Aostans (75,000), Occitanians (50,000), Tunisians (46,575), Filipinos (40,292), Jews (32,000), Ladinos (30,000), Greek-speakers (10,000-12,000) and a small number of French-speaking Aostans and Croatians, in addition to Cape Verdeans, Eritreans, Somalis and Ethiopians (600,000 in all). Was the Italian delegation in a position to confirm those figures?

3. He noted that the Italian Constitution referred to racial discrimination only in a general clause of article 3, which affirmed that all citizens were equal before the law, without distinction as to sex, race, language, religion, political opinion or personal or social status. In his view, that provision was insufficient to meet the aims of the Convention.

4. Likewise, the provisions of the international instruments to which Italy was a party could not be invoked directly before Italian tribunals and Italy had no specific legislative texts to ensure the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, the UNESCO Convention against Discrimination in Education and the ILO Discrimination (Employment and Occupation) Convention. He wondered whether Italy's method of issuing implementing orders was sufficient to ensure the entry into force of those instruments.

5. Italy was a party to the Schengen Agreement, one of the main aims of which was to combat illegal immigration into the member countries of the European Union although, in practice, it also had the effect of closing the doors of States parties to foreign visitors from non-member States who wished to travel legally to a country of the Union. Did that situation not constitute de facto discrimination based on national or ethnic origin?

6. He was disturbed by the information contained in paragraph 17 of the periodic report. In his view, the clarifications provided by the Italian Supreme Court concerning Decree-Law No. 122 of 1993, under which the activities of organizations or movements inciting racial, ethnic, national or religious discrimination or violence were designated as punishable offences,

were ambiguous insofar as they did not seem to stipulate that such activities should automatically be considered not only as illicit but also as impairing the "specific and necessary characteristics of democracy". In his view, that ambiguity did not seem to guarantee the full application of the principle of equality that was enshrined in the Constitution.

7. Being aware that Italy had acceded to the Council of Europe's Framework Convention for the Protection of National Minorities, an international instrument that did not contain any definition of the term "national minority", he would like to know how Italy defined that term. That information would be particularly useful since the report provided no details on the demographic composition of Italian society.

8. Mr. VALENCIA RODRIGUEZ commended the frankness of the report of Italy, which recognized the existence in Italian society of racial discrimination linked to the influx of immigrants, refugees and asylum seekers from neighbouring countries in difficulties. He welcomed the attitude of the Government which, in order to combat the increase in racist offences, had adopted measures under which prison sentences had been imposed. The results, although modest, were nevertheless real as the number of racist offences had diminished. He also welcomed the appointment of a special commissioner for immigrants from non-member countries of the European Union since that innovation seemed to be producing satisfactory results. Italy should continue to keep the Committee informed of developments in the situation following the adoption of those two measures.

9. He noted with interest the adoption of Decree-Law No. 122 of 1993 under which racial, ethnic, national or religious motives were regarded as an aggravating circumstance in the commission of crimes and the display of emblems or symbols of organizations inciting racial, ethnic, national or religious hatred was designated as a criminal offence. In his view, that measure constituted an exemplary application of the provisions of article 4 of the Convention. He also thought that the Supreme Court had been right when it ruled that the behaviour of organizations or associations with racist aims did not necessarily imply subversive acts against the democratic order (para. 17).

10. The information provided concerning the implementation of article 5 related primarily to the situation of aliens, thereby reflecting the acuteness of that problem in Italy. However, that country should take care to ensure that the measures that it adopted to curb illegal immigration did not prejudice basic rights or rules of humanitarian law, bearing in mind the extent to which its economy attracted and would continue to attract the inhabitants of less-developed countries of that and other regions.

11. With regard to the difficulties referred to in paragraphs 27 et seq., he urged the Italian Government to continue to study the situation and to take adequate measures that showed due regard for the provisions and the spirit of the Convention. He would like to know what results had been achieved through the deportation of foreign prisoners (para. 34), which was the main tool that Italy employed to reduce overcrowding in its prisons.

12. In his view, the question of foreign workers should remain a focal point of concern due to their increasing number and the fact that they provided a

useful source of manpower for the country's economy. Accordingly, they should be afforded legal protection under which they would enjoy safety and respect in Italian society.

13. He regretted the lack of information concerning the implementation of article 6 of the Convention, in spite of the numerous infringements of the provisions concerning ethnic and racial discrimination, and hoped that the next periodic report would remedy that shortcoming.

14. With regard to the implementation of article 7, he noted with satisfaction the educational programmes designed to promote a spirit of tolerance and understanding among the various racial and ethnic groups, as well as the measures taken to facilitate access to State-run schools by children of different ethnic and cultural origins. He would like to know what measures had been taken to provide foreign children with instruction in their mother tongue, in addition to Italian, when circumstances so required. He would also like to know what results had been achieved through the teaching of additional subjects to non-EU pupils in accordance with the Decree-Law of 16 April 1994.

15. He noted that no information had been provided under article 7 concerning measures taken to promote the culture of the various ethnic groups or to control the activity of the media. In that regard, he hoped that the Italian Government would take measures to publicize the Convention, the periodic reports of Italy and the Committee's conclusions following its consideration of those reports.

16. Mr. BANTON said that the Italian delegation had informed the Committee, during its consideration of the previous periodic report, that Italy was thinking of withdrawing its reservations concerning some provisions of the Convention (CERD/C/SR.1076). Noting that the report under consideration made no mention of that subject, he wished to know how that situation stood. He pointed out that, according to statistics published in 1997, the Italian population had difficulty in renewing itself, insofar as deaths tended to outnumber births, and was being maintained only through immigration.

17. Paragraph 1 of the report stated that there appeared to be "a widespread improvement in Italy in respect for the principles of the Convention". That optimistic view contradicted the conclusions of a study conducted by a British organization, the Commission on Racial Equality, on Frankfurt, Lyons and Rome, which showed that racist crimes or acts of aggression were rarely reported to the police by the victims themselves. In the case of Italy, the report suggested that the real figures were probably far higher than those available to the authorities.

18. Concerning the implementation of article 5 (b), he shared the views of Mr. Diaconu concerning discrimination in the prisons and would like to have figures on the known cases. With regard to article 5 (e), he regretted that paragraph 46 referred only to agricultural workers and that Italy had not taken part in the cross-national ILO research programme on discrimination in the field of recruitment, which would help the Italian Government to mobilize public opinion to combat discrimination in employment. He urged the Italian authorities to consider participating therein.

19. He welcomed the positive information provided on article 42, to which reference had been made in the previous report, but did not fully understand the relationship between that article and the remedies provided for in the Labour Code. He wished to know whether a person who was the victim of employment-related racial discrimination was protected in the same way as a victim of gender-based discrimination. It would be useful to know whether adequate remedies existed and whether they had been utilized.

20. He noted that three cases which had been brought before the European Court of Justice seemed to indicate that the rule of equality of treatment without distinction of national origin was not respected in regard to teaching posts in Italian universities. Did the State party intend to take measures in that connection?

21. Noting also that the report made no mention of any cases of discrimination in regard to the right of access to housing, he hoped that the next report would provide information concerning the application of Law No. 943/1986 which prohibited discrimination against aliens in that field. Given the fact that the report contained no reference to complaints by aliens against landlords, he wondered whether that Law was really applied and whether measures had been taken, in consultation with associations of immigrants, to assess the incidence of discrimination in access to housing.

22. He wondered whether the children of immigrants were concentrated in particular schools, as happened in some European countries. He hoped that Italy would specify in its next report not only the measures that had been taken to combat racist behaviour in sport but also whether the football teams of associations of immigrants enjoyed equal access to playing fields and whether they were able to organize matches with indigenous teams. He also requested the Italian Government to indicate in that report whether article 187 of the regulation implementing the Public Safety Act of 1931 protected immigrants from being refused service in restaurants and dance halls.

23. Italy's next report should also include information on the implementation of article 6, which had not been dealt with in the report under consideration, and also on the organization of special human rights training programmes for police officers, as provided for in article 7, bearing in mind the fact that, in order to be effective, such training should be supplemented by constant supervision. Finally, it would be useful to know what measures had been taken by the authorities to monitor the activity of the media for the purposes of the Convention.

24. Mrs. ZOU noted with disappointment that, in the report under consideration, Italy had failed to provide the information requested of it in the previous report concerning the composition of its population. In view of the increase in the overall population, the Committee was not in a position to fully understand all the aspects of the situation.

25. It had been said that immigrants who had been living in Italy for some time and who fulfilled certain conditions could obtain residence permits. Did that rule apply to all immigrants on an equal footing?

26. She noted, like Mr. Banton and Mr. Diaconu, that the report contained no information on the implementation of article 6 or article 7 concerning, in particular, the training of law-enforcement officials the importance of which had been emphasized by the Committee during its consideration of the previous report. Those omissions were not acceptable in view of the considerable resources available to a developed country such as Italy.

27. She noted, in particular, that the report made no reference to the situation of the Roma/gypsies, who were usually the minority group most exposed to discrimination in all public services in the European countries. She hoped that Italy would remedy those shortcomings, which had been brought to its attention, by providing, in its next periodic report, information concerning the measures that it was taking or intended to take to combat racial discrimination in its territory.

28. Mr. van BOVEN welcomed the fact that the head of the Italian delegation had announced his Government's intention of regularizing the situation of 300,000 illegal immigrants. That would be a significant step forward, provided that the regularization was effected independently of the ethnic origin of the persons concerned.

29. He recalled that, in March 1995, the Committee's concluding observations on the tenth periodic report submitted by Italy contained numerous suggestions and recommendations to which it was hoped that Italy would respond in its subsequent report. It was highly regrettable that Italy had not followed the Committee's recommendations, particularly those in which it had requested further information concerning the effectiveness of the remedies available in the event of discrimination, the number of complaints filed in respect of racially motivated offences and the measures taken by the State party pursuant to article 6 of the Convention (reparation and satisfaction).

30. He also wished to know the precise modus operandi of the preliminary reception centres for immigrants at the frontiers. Were they controlled by the judicial authorities? Were those centres freely accessible? Could the Italian delegation also furnish the details requested by the Committee in 1995 concerning the composition of the population and could it provide social statistics concerning the most disadvantaged fringe of the population?

31. He was disappointed that Italy had not withdrawn the reservation that it had expressed concerning article 8, paragraph 6, of the Convention, concerning coverage of the Committee's expenses by the States parties. In that regard, he pointed out that Italy had co-sponsored a draft resolution transmitted to the General Assembly (A/C.3/53/L.18/Rev.1) strongly urging States parties "to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee ..." (para. 13).

32. He welcomed the fact that, in 1993, Italy had promulgated an enactment making more extensive provision for the implementation of article 4 of the Convention (condemnation of all propaganda based on ideas or theories of superiority of a particular race) but wondered whether Italy was considering the adoption of legislation which would have a broader impact on the question of discrimination. Had Italy adopted the constitutional amendment recommended by the European Committee against Racism and Intolerance with a view to

guaranteeing the rights of all persons residing in Italy and not solely those of Italian citizens? He also wished to know whether Italy was considering the establishment of a special institution to deal with questions of racial discrimination.

33. On the question of the Roma housing problems, he said that the European Roma Rights Centre had reported systematic discrimination against those persons in Italy, particularly in regard to housing policy. According to the Centre, the legislation that had been adopted in the late 1980s and early 1990s in 10 of Italy's 20 regions were intended to "protect the nomadic culture through the construction of camps for use by the Roma". Most of the camps were evidently fenced, their entrances being under surveillance, and there was even one camp that had apparently accommodated as many as 2,000 Roma although it was designed to receive no more than 700. He wished to know what explanations the delegation could provide in that connection and what measures the Italian Government might intend to take to remedy that situation.

34. He commended the legislation that Italy had promulgated in accordance with article 6 and, in particular, the existence of effective remedies against acts of discrimination and violations of fundamental freedoms by individuals. However, he requested the delegation to explain whether such complaints could be lodged against the State. If not, that would constitute an inadmissible restriction of the scope of article 6.

35. Mr. YUTZIS said that, of the 52 paragraphs in the report, 24 placed non-EU citizens in a separate category; in other words, 50 per cent of the report referred to a particular category of citizens. None of the reports that the Committee had considered made such explicit and repeated mention of a category of citizens that could be called "extra-Community".

36. He did not contest the statements made in the report to the effect that "most crimes against non-EU citizens took place in the context of organized crime", that "non-EU citizens have often been the perpetrators of crimes against other non-EU citizens" (CERD/C/317/Add.1, para. 6) or that problems of delinquency had been encountered among non-EU citizens. However, such statements tended to portray that category of immigrants in a criminal light that might not fully reflect the real situation. In that regard, he recalled that the Committee had strongly criticized Switzerland's "three-circle" immigration policy, since revised, under which there was a first circle of totally marginalized immigrants, a second circle that was semi-marginalized and a third, consisting of citizens of the European Union, that constituted a separate category.

37. In paragraph 27 of its report, in which it presented statistics concerning the national origin of prisoners, Italy distinguished between EU and non-EU citizens. What was the underlying implication in that distinction? Italy was a country of emigration and its nationals had settled in numerous foreign countries, including Argentina. If the term "mafia" implicitly referred to an aspect of Italian culture, did that mean that all Italian citizens were mafiosi?

38. Mr. de GOUTTES welcomed the fact that the President of the Italian Inter-Ministerial Committee on Human Rights, together with its

Secretary-General, formed part of the delegation. He noted that the first paragraph of the report under consideration mentioned Kurds among the non-EU citizens who had entered Italy. In view of the special problems associated with that minority, did the delegation have any recent information concerning the situation of that minority in Italy?

39. He said that Italian penal legislation seemed satisfactory in regard to the provisions of article 4 of the Convention given the fact that Decree-Law No. 122 of 1993 (converted into the Law of 25 June 1993), which envisaged "urgent measures as regards racial, ethnic and religious discrimination", designated dissemination of racist ideologies, instigation of racial violence and the establishment of racist organizations as criminal offences and also regarded racism as an aggravating circumstance in any unlawful act. However, under Italian penal legislation, was it also a criminal offence to refuse goods, services or access to public places on racial grounds?

40. Noting that the report provided only brief judicial statistics concerning offences involving racial or ethnic discrimination, he said that it would have been useful if the authors of the report, instead of merely stating that 37 offences of that type had been recorded in 1996, had specified the categories of offences reported and the nature of the penalties inflicted. While stressing the gravity of offences involving the illegal employment of labour, he expressed surprise at the small number of complaints and convictions for racist acts since, according to the information received from non-governmental organizations and from the European Roma Rights Centre, not only the Roma but also other minorities had allegedly been victims of discrimination by the police. According to that information, the police apparently failed to follow up complaints and sometimes engaged in acts of violence and, in addition, acts of discrimination had been observed in the judicial system. In fact, Roma were apparently placed in detention more frequently than others and the sentences handed down against them were more severe. The report itself (para. 27) acknowledged that the percentage of prisoners who were aliens stood at 17 per cent on 31 March 1994 and had since increased. It would be helpful if the delegation could provide clarifications on those questions.

41. He also wished to have details concerning the measures taken by Italy in accordance with article 7 of the Convention and, in particular, on the training of law-enforcement agents on matters relating to human rights and inter-ethnic understanding. What measures were the authorities considering in order to promote a better understanding of the Convention?

42. Mr. NOBEL said that, according to Amnesty International's report for the year 1998, 300 applications for asylum by Albanians had been rejected after summary proceedings and launches flying the Italian flag were patrolling the waters separating Italy from Albania with a view to intercepting and immediately repatriating any illegal immigrants. He inquired whether Italy intended to ensure that the customary procedures for the granting of refugee status were applied to all asylum seekers, including Albanians. Italy was one of the few countries to have imposed geographical and time limits for the acquisition of refugee status, contrary to the provisions of the 1967 Protocol

relating to the Status of Refugees. That fact, in conjunction with the problems facing European immigration policies, had led Italy to practise discrimination against refugees from Africa or other non-European countries by denying them the means to regularize their situation. Did Italy intend to sign that Protocol?

43. Mrs. SADIQ ALI said that, according to the World Directory of Minorities, the first immigrants to Italy were women from the Philippines and Cape Verde, who were employed as domestic servants, and persons from the former Italian colonies of Eritrea, Ethiopia and Somalia who were employed in agriculture and construction. Could the delegation explain to the Committee whether those persons were forced to work without interruption or whether they had the right to return to their countries? What was their status? Were their children entitled to receive an education or did they too have to remain domestic servants?

44. She also requested the delegation to indicate whether the Roma, who constituted the most vulnerable group of immigrants, enjoyed access, as required by article 5 (f) of the Convention, "to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks". What measures had the Italian Government taken to make magistrates, law-enforcement agents and teachers more aware of the country's multi-ethnic situation?

45. Mr. SHAHI referred to Italy's humanitarian attitude towards Yugoslav and Albanian immigrants, pointing out that Pakistan had received more than 3 million Afghan refugees from 1979 to 1981. Due to the decrease in contributions from the donor countries, Pakistan currently had to meet the needs of some 1.5 million refugees from its own resources. He hoped that the Italian Government would continue to show generosity to refugees who were fleeing conflicts and deprivation.

46. The CHAIRMAN, speaking in his personal capacity, said that one paragraph of the report mentioned Kurds among the non-European immigrants. In that connection, he referred to the problem of the Kurdish leader Abdullah Ocalan, to whom Italy had refused to grant political refugee status. According to some press articles, the Italian Government had been subjected to pressure and even threats designed to prevent it from granting him political asylum. Were those allegations true? If so, to what extent had they influenced the Italian Government's decision.

47. Mr. Sherifis resumed the Chair.

48. The CHAIRMAN invited the Italian delegation to reply to the questions raised by the members of the Committee.

49. Mr. MORENO (Italy) said that his delegation would reply, first of all, to the questions raised during the preceding meeting, after which it would request the Chairman to suspend the meeting for a few minutes in order to enable it to prepare its replies to the questions that had just been put to it.

50. As several members of the Committee had noted, the Italian Government's current policy in regard to problems of racism and immigration was based on two principal enactments: the Law of 1993 on racism, to which reference had repeatedly been made, and Law No. 40/1998 on immigration.

51. Those new texts had had immediate effects since, immediately after the promulgation of the Law of 1993, an increase had been noted in the number of legal actions instituted for racist acts. A peak had been reached in 1996, with a total of about 50 convictions. In response to the members who had wished to know how many legal actions were involved, he said that a multiplier of about four could be applied; in other words, during that year about 200 complaints of racist acts had been heard by the tribunals, which had obviously acquitted a number of defendants. The Italian delegation regretted not having provided more figures in its presentation and undertook to transmit further statistics to the Committee.

52. The procedure for Italy's ratification of article 8 of the Convention was under way and that article should be ratified in the near future.

53. In response to Mr. Sherifis' question as to whether Italy was disseminating information on the possible individual remedies that the Convention offered, he said that it had not been deemed necessary to organize a special information campaign in that connection since everyone in Italy, including occasional residents, was aware of the possibility of seeking individual remedies before the European Court of Human Rights at Strasbourg under the terms of the European Convention on Human Rights and the protocols relating thereto.

54. With regard to the question as to whether Italian laws took precedence over human rights conventions, those two systems were initially placed on an equal footing but, following a series of rulings by the Constitutional Court based on the principle of speciality, international conventions were now deemed to take precedence over domestic law.

55. In response to Mr. Ferrero-Costa's question concerning the efforts that had been made to encourage the Italian police to comply with the provisions of international conventions, he said that training courses had been held in order to inform them of the content not only of Italian legislation but also of international instruments.

56. Mr. Ferrero-Costa had also expressed concern at the Italian Government's proposal to "plan" future migratory flows. There were currently about 890,000 migrant workers in Italy, as well as 400,000 others awaiting regularization and who, moreover, had a good chance of obtaining permits to work and reside there. Unfortunately, there was also a fluctuating number of about 300,000 undocumented persons, some of whom were merely transiting through Italy. The problems encountered were of such magnitude that the Prime Minister had recently considered the establishment of a permanent institution to monitor migratory phenomena. In that field, the Italian Government was pursuing a twofold approach consisting initially in an attempt to make a humane response to the emergency situation brought about by the recent influx of immigrants and, subsequently, to set up a preventive system by entering into a dialogue with neighbouring Mediterranean countries with a

view to the conclusion of mutual agreements to receive a certain number of migrant workers who were needed by the Italian economy and who could thereby enjoy better conditions and avoid undocumented status. That would obviously necessitate the establishment of administrative control systems in the countries of origin and it was conceivable that, in order to gain time, some immigrants might attempt to circumvent bureaucratic channels by continuing to enter Italy illegally. The ideal solution would obviously be for neighbouring countries to create better conditions of employment that would dissuade their nationals from clandestine emigration to Italy with the risk of being exploited there.

57. In the meantime, Italy was making every possible endeavour to host immigrants in an appropriate manner by vigorously combating racism and xenophobia and organizing training courses not only for social assistants, teachers and health workers but also for magistrates. The latter were vigilant and racist motivations could indeed constitute an aggravating circumstance in the judgement of an offence even though, given the independence of the judiciary, the Government had no right to comment on, let alone influence, judicial decisions.

58. With regard to the xenophobic tendencies of the extreme right-wing parties or the Liga Nord to which Mr. Diaconu had referred, Italy had considerably restricted the immunity that members of Parliament enjoyed and they could be prosecuted for making racist remarks or engaging in racist acts.

59. Several members of the Committee, and particularly Mr. Diaconu and Mr. Ferrero-Costa, had asked why distinctions were made between minorities. Those distinctions had historical origins. For example, Albanian immigration, which had nothing to do with the recent influxes of refugees from Albania due to the events in that country, was a long-standing tradition and the Albanian heritage formed an integral part of the Italian cultural patrimony.

60. The Roma, who used to be nomads, were exhibiting an increasing tendency to become sedentary and the Government had decided to include them among the minorities "under tutelage" whose educational and other rights were accorded special protection. The distinction that Italy made between immigrants from the European Union and those from other countries was attributable to the fact that the European institutions obliged it, as a member of the Union, to grant European nationals the same rights as those enjoyed by Italians. However, Italy had never applied legislation that discriminated against migrant workers. Although, in the past, consideration had been given to the introduction of nationality quotas for immigrants with a view to equitable geographical distribution, about 400,000 applicants for immigration who had recently presented themselves at the Italian frontiers had all been accepted regardless of their origin.

61. At the domestic level, there was no difference in treatment between Italian workers and foreign workers, even those in an irregular situation, since, to quote only one example, the latter were entitled to social security. Foreigners and nationals alike could avail themselves of the services of the Mediator in the 22 regions of Italy that had established or were preparing to establish that institution and the Immigration Law No. 40/1998 had made it much easier for anyone to bring a civil action.

62. The Italian delegation intended to comment further, in due course, on the question of the right of asylum. In that regard, the problem of the Kurdish immigrants had been suddenly aggravated by the arrest of the leader of the Kurdistan Workers' Party (PKK), but Italy was doing its best to make a humane response to that crisis.

63. He requested an interruption of the meeting for a few minutes to enable his delegation to prepare the following replies.

The meeting was suspended at 12 p.m. and resumed at 12.15 p.m.

64. Mr. PIERANGELINI (Italy) confirmed that, as the head of his delegation had already explained, the distinction made between minorities was based solely on historical reasons. Although the linguistic criterion was not normally a factor in the definition of a "minority", it was well known that there were 280,000 or more German-speaking persons in northern Italy and some 50,000 French-speaking Occitanians in Piedmont. The Ladino-speakers numbered about 55,000 and the Catalans of Sardinia 18,000. Italy also had about 600,000 Slovenes living mainly in the region of Trieste and Udine. The Albanians who had emigrated to Italy over the centuries had settled mainly in southern Italy, where they numbered about 73,000. The Roma, numbering some 130,000, whose ancestors had arrived in the Middle Ages were tending to become sedentary and no more than 32 per cent of them were currently true nomads. Their children were attending school more regularly and educational programmes had been designed especially for them in order to help them to integrate while preserving their culture and their traditions. The new Law of 1998 also made provision for specific measures in favour of minorities and pilot projects had been launched to show teachers how to take their needs into account.

65. With regard to the granting of refugee status, no distinction was made on the basis of the national or ethnic origin of applicants. For example, 150 Kurds had recently been recognized as refugees and had settled as craftsmen in Calabria, where they had integrated very well.

66. The Italian Parliament was currently considering the adoption of a new highly comprehensive law on asylum that would ensure the application in Italy of the provisions of all the relevant international conventions, including the Geneva Conventions and the Dublin Convention Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Communities. That law would accord increased support to refugees.

67. Mr. MARTELLO (Italy) said that, in his capacity as a magistrate specialized in labour law, he could confirm that Italy had no legislation that applied especially to foreign workers, who enjoyed the same rights and the same treatment as Italians.

68. Foreigners who were victims of discrimination had the same right as Italians to notify the services of the Labour Inspectorate, which could report any irregularities and have the employers convicted. They could also file a complaint directly with the tribunals and, judging by the large number of

disputes being heard, they were already availing themselves extensively of that right. To that end, they were being supported by trade-union organizations which were helping them to uphold their rights.

69. Whenever a foreign worker won his case in a labour dispute, he was usually awarded substantial damages in order to re-establish his equality with Italian workers. In fact, employers were obliged to apply the principle of "equal pay for equal work". Finally, if a foreigner was a victim of unfair dismissal, a judge could order his reinstatement in the enterprise as he would do in the case of an Italian.

70. The fact that foreign workers were accorded the same rights as Italian workers made it easier to detect irregularities, to dissuade some employers from exploiting cheap labour in view of the risks entailed by any breach of the law, and to eliminate any form of unfair competition between Italian and foreign workers. Consequently, the labour legislation provided the best possible protection for workers.

71. Mr. CITARELLA (Italy) said that, with regard to the legislation concerning minorities, the Italian Government was endeavouring not only to harmonize the various laws in force in that field but also to adopt standard legislation that would apply to all minorities without distinction, since some of the current particularities arose from international agreements concluded with neighbouring countries.

72. He emphasized the difference, under Italian law, between an immigrant and a member of a minority. Minority status was granted to groups which had lived in the country for several centuries, immigrants being considered to be persons who had recently entered Italian territory.

73. On the question of the Kurds, he said that they enjoyed special treatment under the legislation on refugees. There again, a distinction should be made between Kurds who emigrated for economic reasons and those who were seeking political asylum. The former had immigrant status and could benefit from the measures that Italy had recently taken to regularize their situation and, in that regard, he mentioned Italy's accountability to the other European countries for any steps that it might take in that connection. The latter, on the other hand, enjoyed the status of asylum seekers in accordance with the provisions of the legislation, which was based on the United Nations conventions concerning human rights.

74. Concerning the situation of the Roma, a distinction should be made between those of Italian origin, who had been living in the country for several centuries, and those who had arrived recently. Members of the first group could obtain a residence permit if they wished to settle in a particular town. Numerous legislative enactments had been adopted concerning that group. They benefited from special measures, such as permission to enrol their children in a school at any time during the academic year, a measure that had been taken due to their considerable mobility and which did not apply to other Italian citizens. Under the terms of a legislative enactment that had been adopted a few years earlier, they currently enjoyed the same rights as other citizens.

75. In response to a question that had been raised concerning discriminatory attitudes towards foreigners, Roma and other groups by restaurant owners, hoteliers and other providers of services, he said that such behaviour was illegal and, as such, could give rise to legal or administrative action which might lead to a conviction and an obligation to pay compensation.

76. With regard to the question of the treatment of some foreign workers, and particularly Filipino domestic servants, he affirmed that all foreign workers enjoyed identical status and no particular group was restricted in its freedom of movement.

77. Concerning the difficult question of housing in Italy, he said that the public housing allocation system from which Italian citizens benefited was also accessible to foreigners. When the latter registered on a waiting list for housing, they were actually privileged insofar as their name was placed in the middle instead of at the bottom of the list. However, that system did not apply to the Roma who, due to their mobility, usually preferred to live in camps reserved for them. He emphasized that those camps were placed under no form of surveillance and their residents could move in and live there freely.

78. The provisions of the Convention could be applied directly by the authorities, including the judicial authorities. A more comprehensive law that had been adopted in 1993 enabled judges to refer to the legislation of their choice. However, if anyone invoked certain provisions of the Convention in order to file a claim for damages, for example, the judge was obliged to hear the case in the light of the provisions of that instrument. Accordingly, it could be affirmed that the Convention had been incorporated in Italian legislation.

79. In conclusion, he indicated that consideration was being given to the establishment of a national commission responsible for human rights issues in Italy and that body would soon come into existence.

80. As a token of the importance that the Italian delegation attached to the work of the Committee, he assured the latter that, following the delegation's return to Italy, everything would be done to disseminate, as widely as possible, the recommendations that the Committee would be making on the conclusion of its consideration of the report.

81. Mr. MORENO (Italy) referring to the future World Conference against Racism which was scheduled to be held in the year 2001, said that Italy wished to make the most careful preparations for that event. It undertook to collaborate with the NGOs concerned and with all the representatives of minorities in order to make a proper contribution to the preparatory work, particularly at the European conference that would be organized beforehand on that subject.

82. He also pointed out that Italy had long been a country of emigration and that millions of Italians had settled abroad in all parts of the world. For that reason, the Italian Government was highly responsive to questions of immigration and would like to ensure that immigrants and their families enjoyed appropriate working conditions and opportunities for human development. Unfortunately, that was not always possible since the rapid

succession of waves of immigration allowed the authorities little time to take the measures that were indispensable for a suitable reception. He added that, in 1999, the Government would be granting voting rights to Italian citizens with dual nationality who were living abroad.

83. The CHAIRMAN invited the members of the Committee to comment on the replies of the Italian delegation.

84. Mr. RECHETOV expressed surprise at the fact that the Roma were denied access to public housing services in the same way as Italians and other foreigners or minorities on the pretext that they submitted no applications to that end. Even in such a case, the legislation should not be discriminatory but should make provision for access by the Roma to public housing.

85. Mr. de GOUTTES found it interesting that judges could base a criminal conviction on a provision of the Convention, which implied that it had self-executing status in the Italian legal system, since, in most of the States parties, it could be applied only through a national legislative enactment.

86. Mr. SHAHI said that he had listened attentively to Mr. Moreno's remarks concerning the preparation of the World Conference against Racism and, in that regard, he hoped that the Committee's work would be duly taken into consideration during the European conference that would be held on that subject.

87. Mr. DIACONU (Rapporteur for Italy) said that, although Italy had effectively begun to implement the Convention, that task needed to be completed. In that regard, he reviewed the aspects in which further efforts should be made: the regulatory system applicable to immigrants and minorities should be rationalized in such a way as to avoid any shortcomings and any discrimination; the situation of the Roma remained disturbing and required the Government's attention; immigrants, whether in a regular or an irregular situation, should also be given special attention, particularly when they found themselves in difficulties (prison, camps, etc.); and there was a need to continue and intensify the training of officials responsible for the implementation of the Convention (police officers, magistrates, etc.). Finally, with regard to the establishment of the national commission on human rights, he hoped that it would devote a large part of its activities to the prevention of racial discrimination.

88. The CHAIRMAN commended the Italian delegation for its constructive attitude. He declared that the Committee had thereby concluded its consideration of the tenth and eleventh periodic reports of Italy.

89. The Italian delegation withdrew.

The meeting rose at 1.05 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-fourth session

SUMMARY RECORD OF THE 1317th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 9 March 1999, at 3 p.m.

Chairman: Mr. ABOUL-NASR

later: Mr. DIACONU

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GE.99-40810 (E)

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Twelfth and thirteenth periodic reports of Peru

1. At the invitation of the Chairman, Ms. Valenzuela de Puelles, Mr. Voto-Bernales, Mr. Armas Bengleri, Mr. Diaz Campos, Mr. Rodriguez, Ms. Vizcarra Alvizuri, Mr. Chavez and Mr. Figueroa Navarro (Peru) took places at the Committee table.

2. Ms. VALENZUELA DE PUELLES (Peru) said that her Government was committed to working for the full enjoyment of human rights, both civil and political and economic, social and cultural. In that context, Peru wished to meet all its obligations under the Convention and continue its ongoing dialogue with the Committee.

3. In the aftermath of the wave of terrorist violence of the 1980s, a series of reforms had been implemented to deal with the worst social, political and economic crisis in Peru's history, and a process of structural reactivation and rebuilding had been under way since the beginning of the 1990s. Outlining the Government's integrated development and poverty alleviation policies and assistance to vulnerable groups, such as displaced persons, she said that one of its priorities was the protection and promotion of human rights and the adoption of concrete measures to eradicate and punish the discriminatory practices that still existed in Peru and prevent their resurgence. The crimes of genocide, forced disappearance and torture had been incorporated into criminal law.

4. Under the Constitution, everyone had the right to equality before the law, and no discrimination on any grounds, including those of origin, race or language, was prohibited. The Constitution also established the principle of complete equality of opportunity in all labour relations.

5. It would be unrealistic to deny that discrimination existed in Peru, as it did in nearly every country. However, discrimination was a product of misconceptions and misguided cultural beliefs, in which education played a fundamental role. For that reason, the Government was implementing a comprehensive, permanent education programme, that aimed to combat all forms of discrimination by promoting equality among different socio-cultural groups, thereby strengthening national unity while respecting diversity. School syllabuses covered multiculturality and human rights, encouraging the recognition and affirmation of Peru's ethnic, cultural and linguistic variety and the understanding and upholding of human rights. The curriculum at all levels of education developed a wide range of psycho-social skills, so that, by the end of sixth grade, at around the age of 11, children would accept people's differences and recognize them as legitimate. Education thus contributed to the gradual overcoming of all forms of discrimination, as part of an overall policy to combat poverty and improve the quality of life for all.

6. Recent legislation punished employers, contractors, training institutes and employment agencies, inter alia, who imposed requirements for employment or training courses that were discriminatory or impaired equality of opportunities or treatment. The law did not cover justifiable discrimination based on a person's qualifications for the job or training course. Efforts to eliminate discrimination in employment were also being made in specific sectors. The Ministry of Transport, Communications, Housing and Construction, for example, had recently introduced guidelines designed to develop human potential, one of the purposes being to discourage employees from practising any kind of racial, political or religious discrimination in the performance of their duties.

7. Peru's indigenous peoples accounted for a significant proportion of its population, and were an important component of its multicultural, multi-ethnic society. Everyone had a constitutional right to an ethnic and cultural identity, and Peru's rural and indigenous communities were recognized legal entities. The Constitution also provided for the delegation of jurisdiction to traditional authorities, in accordance with customary law, on condition that the fundamental rights of persons should not be violated. The aim of such provisions was to combat discrimination in the areas of human rights and the administration of justice; one way in which that was done was to provide for special treatment for those who committed a punishable act but who, because of their culture or customs, did not realize that it was an offence. Such persons were not held responsible or were given a reduced sentence, according to the penal regulations.

8. One of the main priorities of the Office of the Ombudsman had always been the protection of the indigenous peoples and communities of Amazonia, and of their rights to land, cultural diversity, development, equality and full participation as citizens. The Office of the Ombudsman ran a programme to facilitate communication with indigenous organizations in different parts of the jungle regions. It also dealt with complaints from members of those communities who considered that their rights had been violated.

9. In the previous year, the Ministry of Justice, through the National Council for Human Rights, had carried out training and support activities in remote communities in the north-east of Peru. One important project had involved training community leaders in extrajudicial conciliation, so that group or community conflicts could be resolved peacefully.

10. As mentioned in the periodic report, one of the most important achievements on the part of the State had been the issue of titles to land and, by late 1998, the Land Title Commission (Comisión de formalización de la propiedad informal - COFOPRI) had issued approximately 250,000 registered land titles. Such title brought numerous benefits, inter alia, allowing the new owners to leave property to their heirs and removing a cause of property disputes.

11. Peru had recently enacted legislation to promote investment in Amazonia, linking State and private investment in road, port, airport, tourism, energy, forestry and aquaculture development projects, in accordance with current legislation and with due respect for the rights of rural and indigenous communities. The State was also playing an important part in promoting access

to health, education, nutrition and justice through socio-economic development projects that would reinforce the ethnic and cultural identity of those communities, improve their integration with the rest of the population and eliminate the kind of situations or material conditions that were conducive to discrimination against such groups.

12. Because a number of cases had recently come to light of people being refused entrance to public establishments on grounds that conflicted with the Constitution, specific legislation had been enacted to establish consumers' right to protection of their economic interests through equitable and fair treatment in all commercial transactions, which meant that no user or consumer could be discriminated against on any grounds, including those of race or language.

13. The principle of equality was also observed in the prison system, where any categorization of prisoners had to be based on objective criteria such as the type of offence or the level of risk presented by an inmate. All prisoners without distinction would eventually be eligible for the vocational programmes and activities that were gradually being provided under the prison rebuilding programme.

14. With regard to article 4 of the Convention, a public debate was currently being conducted in Peru on the classification of certain forms of discrimination as offences. Preliminary draft legislation was before Congress to define discrimination along the lines of article 1 of the Convention. The legislation would punish incitement to, or acts of, discrimination and prohibit the establishment or support of organizations promoting discrimination. It would also address discrimination in employment i.e., preventing or hindering the hiring of a person, imposing unequal working conditions or denying a public service - and discrimination by public servants. Another bill, would make it an offence to order or execute actions that gave rise to any form of racial discrimination or to behave in such a way as to exclude persons, on racial grounds, from access to employment, public or private services or educational establishments, or to prevent them from entering public places. The proposed penalty was not less than three months' and not more than two years' imprisonment. A related offence would be consumer discrimination, for which the penalty suggested was 30 to 60 days' community service or a fine equivalent to 180 to 365 days' earnings.

15. Lastly, two proposals for draft legislation, based on the model legislation recommended by the Committee, punished the offences of incitement to racial hatred or discrimination and the prevention or impairment of the recognition, enjoyment or exercise of rights on racial grounds. Congress would shortly be selecting one of the two bills for enactment.

16. Peru's work in combating racial discrimination was not yet complete. International cooperation would be needed to help her country to implement its development projects to enable all sectors of the population to benefit equally from them. The profound changes in Peru in recent years and consistent efforts by the Government had strengthened Peru's cooperation with the United Nations human rights treaty bodies. Its commitment was demonstrated by the setting up, with UNESCO's assistance, of the Ministry of Justice's National Council for Human Rights and the integral training

programme in human rights for marginalized women designed to help build and strengthen a culture of peace in Peru, as one strategy in the fight against the abject poverty in which so many Peruvian families lived. Her delegation looked forward to a fruitful and constructive dialogue with the Committee.

17. Mr. de GOUTTES (Country Rapporteur) thanked the Government of Peru for its regular dialogue with the Committee and for sending a high-level delegation, led by the Minister of Justice whom he thanked for her interesting overview of the situation in Peru and of new developments in legislation. He noted the distribution of the Universal Declaration of Human Rights translated into 34 indigenous languages, a great achievement.

18. As stated in paragraph 77 of the core document (HRI/CORE/1/Add.43/Rev.1), Peru had been moulded by thousands of years of pre-Colombian development and 500 years of western culture; the Constitution accordingly defined Peru as a multi-ethnic and multicultural country. Surely no better summary could be made of the uniqueness and spirit of the Peruvian nation, which included indigenous and peasant communities with their own legal status and cultural identity.

19. Referring back to the principal concerns expressed by the Committee during its examination of the eleventh periodic report of Peru in 1995, he noted that Peru had only partially responded to those observations and recommendations. His own observations were based on United Nations documents and non-governmental organization (NGO) sources, particularly the Asociación pro Derechos Humanos (APRODEH), a member of the International Federation of Human Rights (FIDH) and the National Human Rights Coordination (Coordinadora nacional de derechos humanos) (CNDPH), a federation of some 50 human rights associations. Reading the Government report and the counter-reports by the NGOs, he had concluded that there had not been sufficient contact and exchange of views at a national level between government authorities and NGOs and that the Committee might recommend that they work more closely together and establish a genuine dialogue in the preparation of periodic reports.

20. As a preliminary comment, he said that the "general" section of the report was too brief, given that the core document dated from 1995. Although information was provided subsequently on the legal status of peasant and indigenous communities and recent changes, on protection of their territory and ethnic and cultural identity, and on education programmes and other measures undertaken on their behalf by various bodies, much information vital to a better understanding of the situation in Peru was lacking. More precise details on the demographic composition of the population were required, notably in view of the 1993 census finding that there were 42 ethno-linguistic groups in Peruvian Amazonia. The Committee was, moreover, not satisfied with the explanation that, since all reference to race had been removed from censuses, it was impossible to report on the ethnic structure of the population and to indicate the percentage of the population who were black, of Asian origin, of mixed race or white.

21. It would have been useful to receive more information on recent changes in the political, economic and social situation of Peru, particularly the effect that the Government's anti-terrorist campaign, the growing influence of the armed forces, the deterioration of public services and an ultra-liberal

economic policy had had on the poorest members of the population, particularly peasant and indigenous communities, and to what extent social inequality was worsening. The Committee on Economic, Social and Cultural Rights in its May 1997 report (E/C.12/1/Add.14), had considered that the failure to address the persistent and serious problems of poverty, the gross inequality in the distribution of wealth among the population, the failure to implement agrarian reforms, the lack of and drastic reduction of public expenditures on health services, the impoverishment of State schools, teachers and families, and the acute forms of discrimination that particularly afflicted women, indigenous people and other minority groups were among the greatest obstacles to the fulfilment of economic, social and cultural rights. Those observations, though dating back two years, bore witness to the complex situation of many Latin American countries, namely the close interrelation between socio-economic underdevelopment and ethnic or racial discrimination, principally against indigenous and rural communities and the black minority. He pointed out that social marginalization suffered by indigenous populations also came within the Committee's mandate, since racial discrimination within the meaning of the Convention was not only institutionalized discrimination, but any discrimination manifested by policies or practices perpetuating the marginalization and impoverishment of certain ethnic groups. He referred the delegation to the Committee's general recommendation of 18 August 1997 on the rights of indigenous peoples.

22. The Committee therefore sought more information in the next report on the main socio-economic indicators of non-integration, such as the percentages of peasants and indigenous and black persons affected by unemployment, disease, early death, suicide, drug addiction or alcoholism, delinquency, prostitution and illiteracy, in order to measure the degree of exclusion or marginalization suffered by certain social groups.

23. Regarding the implementation of article 2 of the Convention, the information given in paragraph 17 of the report was too general and too legal, with no information on how effectively the laws were applied in practice and what difficulties were encountered in their application. A similar observation had been made by the Committee on the eleventh report.

24. Up-to-date information was needed on a number of points. Firstly, what changes had the Constitution of 1993 made to the status of the Convention and other international treaties in the hierarchy of national laws? According to the APRODEH report, international treaties had been downgraded from constitutional status to the status of ordinary laws. That observation had been corroborated by the conclusions of the Human Rights Committee in its concluding observations on Peru in 1996 (CCPR/C/79/Add.72). The Committee also wished to receive information on the effective and practical application of International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, ratified in 1994, and on draft amendments to the Constitution. Although the Human Rights Committee had recognized in 1996 that the State party had the right to adopt vigorous measures to protect its population against terrorism, insofar as such measures did not violate the rights protected by the Covenant, the Committee against Torture, in its conclusions of January 1999, had deemed emergency legislation hardly conducive to respect for human rights; information was sought on its continuation.

25. Could the delegation shed light on the laws passed between 1995 and 1998, notably Acts Nos. 26546, 26623, 26695 and 26933, on the administration of justice, which according to the Committee against Torture, reporting in January 1999, arguably seemed designed as a renewed challenge to the independence of the judiciary, whereas as the judiciary ought to be the guarantor of rights for all, particularly the most underprivileged rural and indigenous populations.

26. The Committee needed more information on the role of the Office of the Ombudsman (Défensoría del Pueblo) in ensuring protection against all forms of racial and ethnic discrimination. It would also welcome further explanations on the administration of justice by indigenous communities. When the previous report had been considered, the delegation had referred to judicial functions exercised by the authorities of indigenous communities within their territorial ambit in conformity with customary law, and to the settlement of disputes by respected members of the community. Could the delegation explain how that particularly original and interesting form of community justice functioned effectively and whether it gave good results?

27. On article 4 of the Convention, the Committee's previous observation that there was very little information on its implementation and that the provisions of certain articles of the Penal Code were not fully in conformity with the requirements of the Convention was still valid. The information contained in paragraphs 23 to 26 of the thirteenth report did not enable the Committee to gauge whether all the requirements of article 4 of the Convention were met. With regard to the Penal Code in particular, both article 129 and article 317 fell short of the requirements of article 4, which required specific laws to criminalize and punish the dissemination of racist ideas, incitement to racial discrimination, acts of violence or incitement thereto, financing of racist activities and participation in racist organizations. The Committee had always insisted on compliance with article 4, in the conviction that the existence of special legislation against racism also served a preventive and pedagogic function, with penal law upholding the values of tolerance and inter-ethnic and inter-racial understanding which society wished to affirm and safeguard. Some follow-up information would be needed on the bills referred to in the introductory statement concerning the illegality of dissemination of racist propaganda and participation in racist organizations, racial discrimination at work and in public or private bodies, and incitement to racial hatred. He noted, however, that according to the CNDH and APRODEH reports, two bills presented to Congress at the end of 1998 aimed at criminalizing racial discrimination, particularly regarding access to public places, had been rejected by the Parliamentary majority, which had invoked freedom of opinion and the risk of precipitating an influx of foreigners. Could the delegation confirm that information?

28. With regard to article 5 of the Convention, paragraphs 32 to 49 of the report dealt with subjects of direct interest to the Committee, particularly the indigenous communities' right to property ownership and the right to housing, on which the Committee had requested more information in 1995. Although the report acknowledged the inadequacies in areas such as housing and health and the underprivileged situation of peasant and indigenous communities, it was short on specific information about the actual, often dramatic, conditions in which rural, peasant and indigenous communities lived.

29. With regard to equal treatment before the tribunals, CNDH and APRODEH considered that the right was only a formal one for the monolingual indigenou populations (those speaking Quechua, Aymara and Amazonian languages) since in practice they did not have access to interpreters to argue their claims or defend them. Moreover, the legal texts were not translated into indigenous languages, and many indigenous persons in prisons were unaware of the crimes with which they had been charged. Prejudices and stereotypes were said to be rife among judges and civil servants, sometimes leading to discriminatory decisions. Legal proceedings for complicity in terrorism and treason were also reported to be unjustly instituted against populations who were terrorized and prey to threats and pressures. Worrying information had been given on prison conditions by the Human Rights Committee in its 1996 concluding observations, namely that in Peru socio-economic criteria wer used to group convicted and unconvicted prisoners. FIDH also referred to the often inhuman conditions in which prisoners were incarcerated, particularly i the Yanamayo prison.

30. Regarding article 5 (b), he drew attention to the Committee's concerns in 1995 about alleged abuses committed as part of the anti-terrorist drive by soldiers and armed groups against rural and indigenous populations, and about the growing participation of peasant committees, rondas campesinas and civil defence groups in criminal activities. It had deplored the impunity which th perpetrators of human rights abuses and violations often enjoyed. Both the CNDH and APRODEH reported continuing human rights violations, affecting mainly the indigenous population; impunity and even amnesty for members of th armed forces; communities having to set up armed self-defence committees whic were assisted by the military and on occasion called upon to settle disputes between peasants about land ownership; and forced army enrolment of young people from the poorest population groups, who were sometimes ill-treated, th Ombudsman apparently having had to conduct an investigation into the matter.

31. In respect of political rights, the CNDH report noted that indigenous persons, who were often without legal documents and illiterate, were de facto unable to enjoy all their political rights. On the question of the political representation of indigenous peoples, already raised in the Committee in 1995 during the consideration of the eleventh report of Peru, had any progress bee made in improving their representation in Congress and the civil service?

32. As to the right to work, the CNDH and APRODEH reports had alleged that access to employment was greatly influenced by racial or ethnic criteria, the employment of whites often being considered by certain employers to be a guarantee of seriousness and effectiveness, notably in the banking sector, advertising, the media and some restaurant chains, whereas menial jobs were left to persons of African or indigenous origin. It would be useful for the Peruvian delegation to explain how Act No. 26772 of 1997 prohibiting discrimination in job offers was implemented in practice. Had it helped prevent racial discrimination on the labour market and promote the hiring of indigenous persons?

33. Concerning the right to housing, paragraphs 33 to 41 provided interesting information on the Government's promotion of the construction of dwellings for low-income residents under the aegis of the National Housing Fund (FONAVI). In its report of 1997, however, the Committee on Economic,

Social and Cultural Rights had expressed concern about the destruction of the habitat and traditional lifestyles and the large number of forced evictions from the Amazon Basin.

34. Regarding the right to medical care and social services, although paragraph 47 of the report listed a number of encouraging developments, in its 1997 report the Committee on Economic, Social and Cultural Rights had expressed concern at the lack of medical services and the sharp drop in public spending on health care. The 1999 CNDH report and APRODEH pointed out that the state of health of indigenous persons was much more serious than that of the rest of the population, the difference in life expectancy being nearly 20 years, and that access to health services and their quality was particularly critical for the population in the Andean and Amazon regions, the costs of medical care being unaffordable by those living in poverty. Those NGOs also criticized the lack of prenatal assistance in rural areas and referred to alleged contraception abuses and a number of cases of forced sterilizations of indigenous women in Andean communities.

35. As to the right of access to public places, the CNDH and APRODEH reports cited discriminatory practices by restaurants, hotels, cafés and nightclubs towards persons of Andean origin. The Peruvian delegation had frankly admitted that such practices existed. At the end of 1998 Act No. 27049 had been promulgated prohibiting owners of businesses open to the public from choosing their customers on the basis of racial criteria, but CNDH reported that Congress had refused to punish such practices. Could the Peruvian delegation provide explanations on the effective application of the Act?

36. On the right to own property, information had been provided on the peasant and indigenous communities' imprescriptible right to own land and on the issuing of title deeds, but he recalled the Committee's previous observation that there was a contradiction between the indigenous communities' right to own land and the rights of the State, which owned the natural resources and determined the country's policy on preserving environmental diversity. The 1999 report of APRODEH noted that the 1993 Constitution had watered down one of the most important rights of indigenous persons recognized under the former Constitution, recognizing only the imprescriptible nature of community property, and not that it was inalienable or unavailable for use. That meant that community property could be declared abandoned and thus considered an economic assets, leaving indigenous and peasant communities vulnerable in facing the pressure exerted by big mining and petroleum companies, whose activities might lead to major environmental damage. Any private investment in forestry and mining in the Amazon Basin in order to develop the region must be subject to respect for the rights of the indigenous population.

37. Turning to implementation of article 6 of the Convention, he commended Peru for having made the declaration under article 14, but paragraphs 50 to 65 of the report did not allow an assessment to be made of the effectiveness of the domestic remedies open to victims of racial and ethnic discrimination. The report should have provided basic judicial statistics, as the Committee had previously requested, giving examples of complaints, prosecution and punishment for racist acts, and of compensation awarded to victims. Further

information would also be welcome on the investigation of complaints by indigenous communities under the special programme referred to in paragraph 67 of the report.

38. Regarding article 7 of the Convention, he noted with satisfaction the interesting information in paragraphs 68 to 86 on the educational system applicable to peasant and indigenous communities and on the protection of their ethnic and cultural identity. Could the Peruvian delegation specify what the "other aboriginal languages" referred to in paragraph 84 were, given that, according to the 1995 core document, Peru had between 64 and 67 ethno-linguistic groups?

39. He asked the Peruvian delegation what measures had been taken to publicize the country's periodic report and the Committee's concluding observations. What had been done to teach law enforcement officers, including the police, prison staff and judges, about human rights and principles of inter-ethnic and racial tolerance and understanding?

40. Mr. VALENCIA RODRIGUEZ, welcoming the demographic statistics in the report, said that of the 80.3 per cent of the population reported as having Spanish as their mother tongue (para. 5), many were probably indigenous persons who were reluctant to admit that they had a different mother tongue or who, for reasons of social integration, also spoke Spanish. In any case, peasant and indigenous groups in Peru made up a considerable percentage of the population.

41. With regard to the implementation of article 2 of the Convention, information was needed on how the various legislative provisions ensuring respect for the principle of equality before the law were implemented in practice. He also asked whether the Ombudsman had ever instituted proceedings to investigate acts of racial discrimination.

42. Peru's ratification of ILO Convention No. 169, its support for Agenda 21 and its participation in the creation of the Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean demonstrated its firm commitment to complying with article 2.2 of the Convention in defending the country's indigenous and peasant groups. He called upon Peru to continue to inform the Committee about its efforts in that area.

43. Turning to article 4, he said that more relevant data was needed on the actual implementation of its provisions requiring all dissemination of racist ideas and the establishment of organizations which pursued those objectives to be declared punishable offences. The Committee looked forward to learning whether the draft legislation to which the Peruvian Minister of Justice had referred, including the bill on incitement to hatred and defamation and the addition of a new article 151 (a) to the Criminal Code, had been passed.

44. On the implementation on article 5, he sought more information on how the right to remove or dismiss authorities and demand an account of their actions (para. 30) was carried out in practice. Could the delegation provide further details on how the right to housing was promoted for rural and indigenous communities and whether any projects were planned? Referring to

the figures on school enrolment (para. 46), he inquired what percentage of peasant and indigenous children, including black groups, attended school.

45. Concerning implementation of article 6, he was pleased to learn that even a declaration of a state of emergency did not entail suspension of such human rights as habeas corpus. However, the Committee would like to know what legal, administrative and other remedies were open to the victims of racial discrimination and whether examples could be provided of cases brought to court.

46. Paragraph 62 reported on cases involving punishment of officers and non-commissioned officers in the security forces, but, as he understood it, that had nothing to do with racial discrimination, but with action taken to combat subversion. He likewise asked how the special programme referred to in paragraph 67 was implemented in connection with investigating and resolving complaints of violations of the rights of indigenous communities.

47. Regarding article 7, he was pleased with the efforts made to promote education for indigenous persons (paras. 71 and 72), but asked for clarification of the statement in paragraph 73 that no changes in national laws or current programmes had yet been drawn up or adopted in accordance with those commitments. He, too, wished to know what efforts had been made to publicize the Convention, Peru's periodic reports and the Committee's concluding observations.

48. Finally, he sought clarification of the special procedure for refugees who remained at the place to which they were assigned until the State of origin withdrew its demand for their return (para. 82).

49. Mr. GARVALOV noted that the thirteenth periodic report did not contain detailed information on the ethnic composition of the population. Although paragraph 5 said that all references to the racial makeup of the population had been dropped from the census, it mentioned "blacks", population "of Asian origin", "mixed race" and "white", with relevant percentages given for those four categories. Pursuant to article 2 (19) of the Constitution, the State recognized and protected the ethnic and cultural diversity of the nation. Why, then, had it not been possible to provide demographic information on all the ethnic groups in Peru, particularly in view of what was stated in paragraph 7 of the report?

50. The World Directory of Minorities 1997 listed the Highland Quechua as making up more than one third of Peru's total population. That group had been among those hardest hit by the Sendero Luminoso, who had destroyed many villages and executed large numbers of Quechua for collaborating with government forces or failing to embrace Senderista ideology. Thousands had been forced to flee to the shantytowns of Lima and Ayacucho. Ashaninka, members of the Arawak language group, inhabited the Peruvian Amazon rain forests and they, too, had suffered at the hands of the Sendero Luminoso. Amazonian Aguarana and Huambissa had formed organizations to protest against the invasion of their territories by oil companies and had demanded that the Peruvian Government recognize their territorial rights. Additional

information on all those indigenous peoples and their situation would be appreciated, as well as on Afro-Peruvians, who had apparently begun a concerted effort to reaffirm their culture.

51. He commended Peru for frankly acknowledging mistakes in its policies with respect to the indigenous populations. One could only sympathize with Peru in its efforts to fight terrorism on its territory.

52. Although the Constitution prohibited discrimination on various grounds, it did not explicitly contain the terms "colour" or "national or ethnic origin" used in the definition of article 1 of the Convention. He was pleased to learn from the delegation that a bill was being discussed to bring Peru's definition of discrimination more into line with that contained in the Convention. The Habeas Corpus and Amparo Act, the Single Uniform Text of the Code of Civil Procedure and the Code of Penal Execution referred to in the report all omitted the term "national or ethnic origin", whereas article 129 of the Criminal Code expressly prescribed punishment for "anyone who, with the intention of wholly or partially destroying a national, ethnic, social or religious group ...". Could the delegation explain the discrepancy?

53. He was not convinced by the argument used in paragraph 26 of the report to justify the replacement of the word "racial" in article 2 of the Convention by "social" in article 129 of the Criminal Code and the deletion of the word "intentional".

54. Article 317 of the Criminal Code did not explicitly prohibit racist organizations as required by article 4 of the Convention. It was unclear from the wording that the punishable offences mentioned in the first sentence were of a racist nature.

55. Turning to article 7 of the Convention, he commended the State party on the steps it had taken to provide education to indigenous communities and to protect ethnic and cultural identity. The use of education as a weapon in combating racial discrimination was in line with the objectives of the joint study on article 7 undertaken by members of the Committee and of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

56. Mr. BANTON said that much remained to be done in Peru to ensure full implementation of the Convention. In particular, judges should be fully aware of the law on discrimination and the obligations that their country had assumed in that regard.

57. Referring to the right of free access to public places or services safeguarded by article 5 (f) of the Convention, he drew attention to an APRODEH report which referred to the defence arguments of a company faced with discrimination proceedings. The company had referred to a sign stating that the enterprise reserved the right of admission and had made misleading references to free enterprise. In his view, discrimination against a group was contrary to free enterprise and amounted to the exercise of monopoly power. The fact that the burden of proof in such cases fell on the complainant was inconsistent with Peru's obligations under the Convention. If a complainant established a prima facie case and demonstrated that its complaint was neither frivolous nor vexatious, some of the burden of proof

must be assumed by the other party. The court in the case mentioned by APRODEH had referred in its judgement to the supremacy of free enterprise and defined discrimination as an "identifiable separation policy" for the purpose of marginalization, ignoring the Convention definition which referred to any act which had "the purpose or effect" of discriminating. An act could be indirectly discriminatory without any intention on the part of the person who was the object of the complaint. The definition in the court judgement stated that a discriminatory policy affecting all members of a social sector had to be identified, but the Convention merely required evidence of inequality of treatment and made no reference to all members of a social sector. He urged the State party to give high priority to rectification of the attitudes reflected in the judgement cited.

58. Ms. ZOU Deci, noting with pleasure that the Minister of Justice of Peru, the head of the delegation, was a woman, said that the report referred to a large number of legal texts but failed to provide sufficient information on their practical implementation.

59. Observing that indigenous populations, ethnic minorities and blacks accounted for half the population of Peru, she asked to what extent they were represented in the country's legislature, the various branches of the administration and law enforcement bodies.

60. Although Peruvian legislation concerning education explicitly prohibited all forms of racial discrimination, there was still a high illiteracy rate and she would welcome information on government action to address the problem. Did children of indigenous people in rural areas have access to primary schools?

61. The report made no reference in its coverage of article 7 of the Convention to the training of law enforcement officers. She welcomed the information in paragraph 62 to the effect that members of the security forces who had violated human rights had been punished and in some cases received prison sentences, but pointed out that it was crucial to increase awareness among military personnel of the importance of protecting human rights. What measures had been taken in that regard?

62. Blacks in Peru belonged to the poorest and most vulnerable sector of the urban population. She would appreciate information about the employment situation of blacks and measures to improve their quality of life and access to education.

63. Ms. McDOUGALL said she understood that blacks in Peru were marginalized in economic, political and social life. They were allegedly denied leadership positions in government, business and the military and suffered widespread discrimination in employment. Both the navy and the air force reportedly applied an unstated and unofficial policy of excluding blacks from officer ranks. Job advertisements in newspapers apparently used coded wording to circumvent the law and make it clear that no blacks should apply. The media routinely portrayed Afro-Peruvians as individuals of questionable character. How did Peru plan to change the status and image of Afro-Peruvians? Were any special measures or affirmative action programmes contemplated?

64. Mrs. SADIQ ALI referred to reports of NGO protests against Act No. of 15 June 1995 which had granted a general amnesty to civilians and poli and military personnel for acts committed between May 1980 and the date o promulgation of the Act. What were the motives for granting total impuni parties guilty of human rights violations?

65. An official alphabet for the Quechua language had been developed in 1997. Quechua and Aymara were recognized in the 1994 Constitution as official languages in areas where they predominated. What progress had b made in introducing Quechua into school curricula? Were there sufficient textbooks and qualified teachers?

66. Mr. NOBEL asked how the Ombudsman was selected and appointed and wh he enjoyed full parliamentary immunity. Was he empowered to take action against military personnel and police officers in cases of abuse or were answerable only to their own supervisory bodies? Could he prosecute or institute legal proceedings? Did the Ombudsman publish regular reports a was there any information regarding the number of complaints received by Office? In what percentage of cases, particularly those relating to ethn minorities and indigenous peoples, had he successfully intervened on beha the complainants? Had he taken steps to promote ILO Convention No. 169?

67. According to paragraph 30 (f) of the report, an arrested person mus placed at the disposal of the competent court within 24 hours, but in cas terrorism, espionage and drug trafficking, pre-trial detention could be extended for up to 15 calendar days. Were the police exclusively respons for determining that, for example, a person was a terrorist suspect and c therefore be held for a longer period?

68. Mr. van BOVEN, referring to article 5 (b) of the Convention, said t the right to security of person and protection by the State against viole and bodily harm continued to be the issue causing greatest concern in Per Indigenous peoples had been disproportionately victimized, inter alia in context of forced disappearances. Welcoming the action taken against sol and paramilitary groups, he asked whether the 1995 amnesty laws, particul Act No. 26479 and Act No. 26492, were still in force. If so, they consti a major impediment to the administration of justice.

69. With regard to the land rights of indigenous communities, he was concerned about the alleged issuing of concessions to oil companies witho reference to the safeguards provided for in ILO Convention No. 169. Indigenous peoples should be consulted under such circumstances and invol in decisions affecting them. In that connection, he drew attention to th Committee's General Recommendation XXIII. Had any legislation been enact for the implementation of ILO Convention No. 169?

70. What measures had been taken to implement article 5 (f) of the Convention concerning access to public places?

71. Referring to article 5 (e) (iv) of the Convention, he welcomed the Government's family planning programmes but inquired about allegations of

surgical contraception, amounting to forced sterilization, particularly among poor women in Andean communities. To what extent were women who took part in such programmes informed of the consequences?

72. He was somewhat puzzled by the references in paragraphs 61 and 63 to the annual report of the Inter-American Court of Human Rights and asked the delegation to clarify their import.

73. Mr. YUTZIS said that Peru had suffered greatly in recent decades in social and economic terms. Marginalization, exclusion and a high rate of emigration had been exacerbated by inappropriate and harmful political methods and procedures whose consequences were well-known. However, those problems were currently being addressed and conditions were improving.

74. Land was a vital component of cultural identity, especially in the case of indigenous peoples. Paragraphs 8 to 12 and 32 of the report indicated that the Peruvian authorities were taking well-intentioned action in that regard. However, NGO reports indicated that existing legislation, instead of reinforcing the principle of indigenous ownership of land, restricted the opportunities available to the indigenous population. He would welcome confirmation, in the form of information on legislative enactments and statistics on titles to land, that the principle of indigenous land ownership was being reinforced.

75. He was surprised at the lack of information in the report on the highly vulnerable black community and urged the State party to rectify the omission.

76. According to FIDH, although the Constitution recognized ethnic and cultural identity as a fundamental human right, in practice persons without indigenous family names were denied such rights even when they lived in an indigenous community. For example, the Ministry of Agriculture did not recognize them as indigenous in its population statistics. He stressed the importance of recognizing individuals' subjective definition of their ethnic and cultural identity.

77. Ms. VALENZUELA DE PUELLES (Peru) said that her delegation was impressed by the Committee's analysis of the situation in Peru and grateful for the wisdom and expertise that was being placed at the disposal of her country's authorities.

78. As a prelude to the delegation's response to the Committee's questions, she reviewed the historical background to the existing ethnic composition of the Peruvian population. Peru was composed of three geographic regions: the Andean highlands, the tropical rain forests of the Amazon river basin and the coast. Peruvian history was the history of a multiplicity of ethnic groups with diverse cultures. The Quechua were the predominant group but a great deal of interbreeding had occurred, initially among indigenous groups and later with the Spanish Conquistadores, blacks from Africa, Asians and other Europeans. Today virtually every Peruvian was of mixed blood and there was no longer a racial problem. Instead, there was a problem of economic underdevelopment in certain sectors of the population.

The meeting rose at 6.15 p.m.

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Fifty-fourth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1318th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 10 March 1999, at 10 a.m.

Chairman: Mr. ABOUL-NASR

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* The summary record of the second part (closed) of the meeting appears as document CERD/C/SR.1318/Add.1.

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GE.99-40819 (E)

The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Tenth and thirteenth periodic reports of Peru (continued) (CERD/C/298/Add.5; HRI/CORE/1/Add.43/Rev.1)

1. At the invitation of the Chairman, the members of the Peruvian delegation resumed their places at the Committee table.

2. The CHAIRMAN invited the Peruvian delegation to respond to questions asked by members of the Committee at the previous meeting.

3. Ms. VALENZUELA de PUELLES (Peru) said that modern-day Peru, the product of a mixing of races and cultures, followed a policy of full respect for human rights. Both its Constitution and its laws embodied the fundamental principles of respect for the human person and for equality among human beings irrespective of race, sex, language and religion. Throughout its history, Peru had safeguarded the habits and customs of indigenous communities while prohibiting their relocation to any environment other than their natural milieu. The indigenous communities from mountain regions, the "panacas", lived according to their traditions in dwellings that were admittedly precarious, but they nevertheless possessed land and animals. The Government was aware that those communities could not achieve all-round, sustainable development as long as the necessary infrastructure such as communication lines, hospitals and health services had not been set up. It was now working to establish a network of schools throughout the country and in particular was planning to build primary schools and secondary schools in the remotest areas of the country.

4. There was no racial discrimination in Peru. No "pure race" existed in the country, since all the races had mingled over the years. Of course there were exceptions to that rule, to be found in certain communities that resisted intermarriage, as much as possible, such as the Quechua, Aymara and Coyagua and the indigenous communities of the Amazon like the Chipibos. Because of racial mixing, there was no black race, strictly speaking, in Peru, and although the term "negrito" was in use, it must not be understood in the pejorative sense but rather as an affectionate term. Neither was there any discrimination against Asians in Peru, as demonstrated by the composition of the Government: the President, Mr. Alberto Fujimori, was of Japanese origin, as was the Minister for Energy, and the Prime Minister was of Chinese extraction. She herself was a member of the Quechua race and there were many mixed-race, Chinese and indigenous members of Parliament.

5. It was not because certain regrettable and isolated incidents had occurred and the news had travelled beyond Peru's borders that the Government had in any way, even to the smallest degree, failed to respect human rights.

6. Mr. ARMAS BENGLERI (Peru) explained that Peru had lived through very regrettable events that had come close to discrediting it in the eyes of the international community. Yet never before the previous century had the country had to bear such a heavy economic burden. The economic revolution had

taken place gradually and the country had had to adjust, while its population had had to struggle to survive. The entire country was aware of what had happened and recognized that mistakes had been made. Peru's intention was not to close its eyes to the abuses of the past but to face up to reality, including by taking account of its complex ethnic situation. Peru which was determined to follow a policy of wealth redistribution, could be proud of the fact that its currency reserves were currently equivalent to US$ 10 billion.

7. The population had grown from some 22 million in 1993 to nearly 28 million today; 70 per cent spoke Spanish and 17 per cent were bilingual, while Quechua was spoken by around 10 per cent of the population.

8. Peru had nothing to hide and was ready to describe its current situation and the difficulties it was facing.

9. Mr. DIAZ CAMPOS (Peru) said that he headed a criminal court in the north of the country and that in 1980, a state of exception had been instituted in certain areas owing to terrorist violence carried out by rural movements determined to put in place a totalitarian regime. In accordance with that decision by the Government, which was in conformity with the Constitution, the army had been accorded political and military control in such areas. Some movements such as the Tupac Amaru had tried to recruit peasants by force. Act No. 25475 governing criminal investigation, prosecution and decisions in cases of terrorist violence had been amended to reflect the temporary nature of the criminal provisions applicable to states of emergency. The Supreme Court as well as the President of the Republic had been given the authority to pardon peasants and members of indigenous communities who had been accused of the crime of terrorism. The Government had set up an ad hoc committee to investigate all cases of individuals accused of such crimes and to grant pardons. To date, several hundred individuals had benefited from the clemency of that body.

10. Thanks to the Government's anti-subversion policy, in the past four years many indigenous communities had been able to return to the land that they had had to leave because of the terrorist threat.

11. Article 139 of the Constitution stated that the judicial branch had exclusive authority for the administration of justice, although it also recognized the competence of military courts when there was a threat to society, either through treason or through terrorism.

12. Peru possessed a legislative framework that gave all Peruvians access to legal services free of charge. Article 139, paragraph 2, set out the principle that judicial proceedings were free of charge in criminal courts and labour conflicts. The sole exception to that principle was cases brought to civil courts, for which there were appropriate legal institutions.

13. Peru had courts of first instance, both civil courts and criminal courts, in all provinces, and justices of the peace in all districts.

14. As part of the revision of the judicial system, in nearly all judicial districts the Government had established itinerant "halls of justice" that travelled to the country's remotest areas. Itinerant indictment divisions had

been created in order to avoid the transport to the seat of higher courts and hence, the humiliation of persons under detention order. The number of escape attempts and acts of violence against detention staff had thereby been considerably reduced.

15. Peru intended to pursue at both the internal and external levels the process of judicial reform that it had undertaken. Only if the country had honest judges with a solid training would it have an effective system of justice similar to that of more advanced countries.

16. Mr. CHAVEZ (Peru) said that 50 per cent of the Peruvian population was living in poverty, 20 per cent in extreme poverty. The matter was considered to be of relevance to the entire nation and the Government was treating it as a priority. Until 1990, the characteristic feature of economic policy had been redistribution of poverty rather than of wealth. Since then, economic policy had changed, facilitating economic renewal and laying the groundwork for lasting growth. With an annual growth rate of 5 per cent, Peru was now the Latin American country that had grown the most in the past four years. In 1998, despite the international crisis, the growth rate had been 2 per cent, which attested to the solidity of Peru's economic foundations. Such sustained growth should promote the gradual creation of wealth to profit broad sectors of the population.

17. It was false to claim that the country's social spending had declined, given that 40 per cent of public expenditure went to the most underprivileged sectors.

18. To speak of inequality in the distribution of wealth was to engage in a sterile discussion that went nowhere, for the phenomenon existed in all countries of the world and in much greater proportions than in Peru, as well as between all countries. Perhaps such inequalities were more visible in Peru, which was a developing country.

19. In response to the questions by the Special Rapporteur on the hierarchical relationship between the Peruvian Constitution and the human rights treaties, he said it was true that the 1979 Constitution had given the treaties constitutional status, and that that provision had not been reproduced in the new Constitution of 1993. But the legal value given to international conventions, including the International Convention on the Elimination of All Forms of Racial Discrimination, remained proportional to the importance of those instruments. To begin with, article 55 of the Peruvian Constitution stipulated that treaties approved by the State were part of national legislation, in other words they were automatically incorporated in internal law upon ratification. Second, only major treaties that could have an impact on the integrity of the State or on its financial obligations or national defence had to be approved by Congress before being ratified by the President of the Republic. International human rights treaties were among those instruments, which indicated the status that they were given within the Peruvian legal order.

20. Finally, the fourth concluding provision of the existing Constitution stipulated that "provisions relating to the rights and freedoms set out in the Constitution must be interpreted in conformity with the Universal Declaration of Human Rights and the relevant international treaties and agreements ratified by Peru".

21. Thus, treaties retained the same rank as in 1979.

22. He wished to give some additional information on the institution of the Ombudsman, who was elected by Congress for a period of five years, the required majority being two thirds. It was a person capable of forging a consensus because of his personal and professional qualities; once elected, he could not be removed by the Government. He had full authority and, under articles 161 and 162 of the Constitution, public bodies including the armed forces and the police were required to cooperate with him. He was responsible for the defence of the fundamental rights of the human person and the community by ensuring, inter alia, that those rights were respected by the civil administration and in the provision of public services. Protection of the rights of peasant and indigenous communities was also part of his mandate.

23. Although the Ombudsman had no jurisdictional or enforcement competence, he was authorized to carry out investigations at all levels of public administration. He played a mediator's role and could intervene in constitutional or administrative procedures to protect the rights of individuals. His activity did not come to a halt when a state of emergency or of exception had been decreed and he had a particularly important role to play during those periods.

24. He could take legislative initiatives and bring an action on the grounds of unconstitutionality or for habeas corpus or amparo. He also concerned himself with the registry of persons detained or sentenced to custodial penalties.

25. Every year, he submitted a report to Congress on his work: a copy of his most recent report would be transmitted to the Committee.

26. The Ombudsman was highly esteemed both in Peru and internationally: at the third annual congress of the Ibero-American Federation of Ombudsmen, held at Lima in September 1998, he had been chosen as head of the Federation.

27. Mr. FIGUEROA NAVARRO (Peru) said he wished specifically to address the questions on the application of article 4 of the Convention.

28. As his delegation had explained in its introduction, a major discussion had been launched on the possibility of making all acts or words that were racist or discriminatory in nature criminal offences, since the provisions of the Criminal Code that were now applicable were deemed to be inadequate. Five preliminary drafts of legislation on discrimination and the criminal prosecution and punishment to which it could give rise had been submitted. The initiatives were considered by a parliamentary commission which could adopt or reject them or formulate counter-proposals. Three of the preliminary drafts had apparently been approved, and two of them were specially designed to curb incitement to racial hatred in all forms, including through

participation in racist activities or organizations. Such activities would henceforth be covered by article 317 of the Criminal Code, which as currently drafted dealt with associations of criminals.

29. The Peruvian Constitution, by establishing the principle of equality, prohibited not only all the forms of discrimination based on race, colour or national or ethnic origin that were cited in the Convention, but also discrimination based on other factors such as sexual proclivity, illness or disability.

30. Those responsible for such acts were subject to various penalties depending on the nature of the offence. Imprisonment was not the only type of penalty they faced: for example, they could be sentenced to civic service.

31. Racist associations were illegal and could be dissolved under article 5 of the Criminal Code. The articles of the Criminal Code which set out penalties for violence, provocation, insult and apology for offenders as well as bodily assault and other types of ill-treatment were applicable in general terms when such acts were inspired by racial motives.

32. Ms. VISCARRA ALVIZURI (Peru) said she was pleased that information from certain Peruvian non-governmental organizations (NGOs) for the defence of human rights had been placed side by side with the information provided by governmental sources. NGOs were entitled to participate in the activities of the Peruvian Council for Human Rights, which comprised representatives of various governmental institutions and of the Catholic Church. If the views of NGOS were not always heard at those meetings, it was because those organizations were not always present, despite the invitations that they regularly received.

33. With regard to ILO Convention No. 169 concerning indigenous and tribal peoples, Peru was proud to announce that it was the twelfth country in the world and the ninth Latin American country to ratify that instrument, which would make it possible to provide higher standards of protection for the country's indigenous peoples. A copy of the most recent communication that Peru had addressed to the International Labour Organization relating to that Convention would be submitted to the Committee's Chairman. The document contained detailed information that might be of interest to members of the Committee.

34. In that connection, she was surprised to hear that Peru was being blamed for not according the status of "indigenous peoples" to groups that in fact had no right to such a title. For the ILO, the term "indigenous" applied to populations that had conserved, fully or in part, their own traditions, institutions and lifestyles, which were set apart from the rest of society by their customs and which lived in a specific area. The definition essentially addressed a social situation and was not intended to establish priorities based on the ancestral rites of the "first inhabitants" of a land. As a consequence, the population groups to which Convention No. 169 was applicable in Peru were the peasant communities in the mountains ("campesinas") and the autochthonous communities in the jungle ("nativas"). The determining factor was being part of a well-defined community and living in that community. The State consulted such groups on everything that affected them and had set up

machinery specifically for that purpose. Consultations had been held in January 1998 in Yucay and June 1998 in Iquitos with the peasant and autochthonous communities.

35. With regard to the follow-up given to the Committee's General Recommendation XXIII (51) concerning Indigenous Peoples, she said the Peruvian Government considered that the Committee's views could indeed inform its work in the area of indigenous and autochthonous affairs but that at the same time it did not intend to renounce its independence of action. While it sometimes happened that its decisions coincided fully or in part with the opinions expressed by the Committee, the Peruvian Government did not consider itself bound to follow to the letter the recommendations formulated by CERD or any other treaty body.

36. Mr. VOTO-BERNALES (Peru), replying to members of the Committee who had referred to the country's "social and economic reality", said that the restoration of peace had been the prelude to any economic reconstruction effort. Everyone agreed that the action carried out by the new Government over the past nine years had been extremely beneficial. Significant institutional changes had facilitated better respect for human rights and the norms enshrined in international conventions. Various laws and provisions had been adopted to meet the needs of the most disadvantaged and provide them with better legal protection, including against racial discrimination. The Ombudsman was playing a very active role which was recognized at the international level.

37. Peru considered its multi-ethnic culture to be a source of wealth, and the integration efforts that were deployed at all levels - in the schools, in institutions, within the Government and in social and economic life - had the sole purpose of combating prejudice and exclusion.

38. Private initiatives adopted to supplement the work of the authorities by creating lodging, schools and jobs and to alleviate certain gaps in those areas (what had been called the "other way") attested to the spirit of solidarity on the part of the entire population and its mobilization to achieve a better future for all. Those initiatives were acknowledged by the Government and received its full support.

39. Ms. VALENZUELA de PUELLES (Peru) said she wished to state, in conclusion, that since President Fujimori's investiture, human rights had been respected in Peru, despite sporadic incidents of discrimination on which the delegation had provided explanations. There was no doubt that broad cultural diversity could give rise to minor instances of friction from time to time. Far from encouraging discrimination, however, the Government's policy was to combat it.

40. The new Government had restored the peace but was still facing all types of problems, including climatic ones, and must now focus its action resolutely on the economic and social development of the country.

41. Her delegation looked forward to receiving the Comittee's conclusions and recommendations and stood ready to provide any additional information that it might require.

42. The CHAIRMAN welcomed the fact that the Peruvian Minister for Justice had reversed previous statements according to which there was no racial discrimination in Peru. No country in the world could claim to be exempt from racial discrimination. What mattered was whether such discrimination was part of a Government policy - which was not the case in Peru - or whether it was simply attributable to ignorant and ill-intentioned individuals.

43. He wished to point out to the Peruvian delegation that the Committee was by no means a European body, even though it met in Europe and even if the geographical distribution among members might create a mistaken impression. The Committee was responsible not for enforcing European standards but for ensuring respect for the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination.

44. Mr. SHERIFIS said he wished to have some clarification on the question of displaced persons. In 1991, a technical commission had been established to try to resolve the problem, in 1993, a programme of support for displaced populations had been launched and in 1994, an inter-ministerial committee had been set up to harmonize the activities of the various ministries concerned. In the light of those initiatives, he would like to know whether the displaced persons had returned to their original domiciles of their own free will, and if so, whether they had recovered their property or, alternatively, had been provided with appropriate compensation.

45. The Committee was all the more concerned over the matter since most of the persons involved had been residents of mountainous regions or members of autochthonous groups. In 1996, the Committee had adopted general recommendations on the matter.

46. Ms. VALENZUELA de PUELLES (Peru) thanked the Chairman for his understanding and confirmed that the Peruvian Government was committed to respect for human rights, but that isolated cases of racial discrimination had occurred. That was why the Ministry of Justice was studying draft legislation aimed at avoiding the repetition of such events.

47. Returning to her earlier remarks, she explained that by mentioning Europe, she had not been likening the Committee to a European body but expressing the wish of the Peruvian authorities to see Peru develop socially, culturally and economically, like the most advanced countries on the European continent. She hoped that with the assistance of fraternal countries, that development objective could be achieved in the medium or long term.

48. Replying to Mr. Sherifis' question on the movements of populations fleeing terrorist repression, she said that around 15,000 individuals had returned to their place of origin with economic assistance from the Government and that 5,000 more individuals would soon be returning to their homes. The problem of displaced persons would accordingly be resolved step by step. Nevertheless, it was not autochthonous groups that had had to flee the terrorists, but rather mixed-race groups, principally from the Ayacucho region and the "red zone".

49. The CHAIRMAN invited the country rapporteur to sum up the debate on Peru.

50. Mr. de GOUTTES (Country Rapporteur) said that the multi-ethnic, multicultural and multilinguistic nature of Peru made it of particular interest to the Committee. He noted with satisfaction that the delegation had referred to the various population groups in respectful terms and had shown professionalism in its responses to the Committee's numerous questions. Addressing both NGOs and the Government, he said it would be useful to create a better dialogue between civil society and the authorities.

51. The delegation had demonstrated the Government's desire to overcome the various problems being faced by the country and its commitment to promoting the development of autochthonous, peasant and other population groups as well as the protection of their economic, social and cultural rights. Nevertheless, a number of points required further clarification: the latest figures on the population's ethnic composition; socio-economic indicators concerning the situation of autochthonous, peasant and African population groups; progress made by such groups in respect of each of the rights enumerated in article 5 of the Convention; legislative reforms undertaken to implement the provisions of article 4 of the Convention and provide penalties for all forms of racial and ethnic discrimination; the legal follow-up given to complaints by victims of racial discrimination; measures to furnish education on tolerance and inter-ethnic and inter-racial understanding for law enforcement officers; and measures to publicize the Convention and disseminate the Committee's reports and conclusions.

52. He hoped that that additional information would be provided in Peru's next report and congratulated the delegation on its spirit of cooperation and frank responses.

53. The CHAIRMAN, referring to the statistics required, said that States were requested to furnish statistics on the ethnic composition of their country if such statistics were available, although in certain countries, the legislation prohibited the collection of such statistics.

54. He thanked the Peruvian delegation for its excellent responses and expressed the hope that in its next report, Peru would be able to respond to the points that had not yet been clarified.

55. Ms. VALENZUELA de PUELLES (Peru) thanked the Committee for having given her delegation a chance to outline the situation in Peru. She assured the Committee that its observations and recommendations would be taken into account when the next report was drafted and that NGOs would be strongly urged to participate in future drafting exercises. She said she was very touched by the Committee's welcome and its encouragement.

56. The CHAIRMAN announced that the Committee had concluded its consideration of the twelfth and thirteenth periodic reports of Peru.

57. The Peruvian delegation withdrew.

The meeting was suspended at 11.55 a.m. and resumed at noon.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING MEASURES AND URGENT ACTION PROCEDURES (agenda item 3) (continued)

Statement by the Committee on the human rights of the Kurdish people (CERD/C/54/Misc.20/Rev.1 - document distributed at the meeting in English only)

58. The CHAIRMAN invited comment on the statement prepared by the open-ended Working Group set up for that purpose. Some members of the Committee would have liked the text to be more trenchant, but it reflected a consensus. It would be incorporated in the Committee's report and would be the subject of a statement to the press. A copy would be sent to the Ambassador of Turkey in response to his request.

59. The statement read:

> "The Committee on the Elimination of Racial Discrimination is profoundly alarmed about widespread and systematic violations of human rights inflicted on people because of their ethnic or national origin. Ethnic antagonisms, especially when mixed with political opposition, give rise to many forms of violent conflict, including terrorist actions and military operations. In many parts of the world they cause immense suffering, including the loss of many lives, the destruction of cultural heritage and the massive displacement of populations.
>
> In this context, the Committee expresses its concern about acts and policies of suppression of the fundamental rights and the identity of the Kurds as distinct people. The Committee stresses that the Kurdish people wherever they live should be able to lead their lives in dignity, to preserve their culture and to enjoy wherever appropriate a high degree of autonomy.
>
> The Committee appeals to the competent organs of the United Nations and to all authorities and organizations working for peace, justice and human rights, to deploy all necessary efforts in order to achieve peaceful solutions which do justice to the fundamental human rights and freedoms of the Kurdish people."

60. The CHAIRMAN said, if there were no objections, he would take it that members of the Committee wished to adopt the statement proposed by the Working Group.

61. It was so decided.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

Organization of the work of the Committee

62. The CHAIRMAN announced that he had received a note from the Permanent Mission of Lesotho in which the Committee was requested to postpone consideration of that country's report. He suggested that the Committee

accede to that request and that the Secretariat contact the Permanent Mission of Lesotho to set another date for the report's consideration, preferably at the next session.

63. It had been drawn to his attention by some members of the Committee and many letters and communications received on the subject that the time allotted for the consideration of the situation in Australia was insufficient, insofar as major changes had taken place in that country and the situation was especially serious. He thought it would be desirable for the Committee to devote the necessary attention to the consideration of that country's report.

64. Since the consideration of the situation in Lesotho had been postponed, it would be possible to devote more time to consideration of the situation in Australia. The date for consideration of the Kuwait report should accordingly be changed.

65. He suggested that the Secretariat contact the two missions concerned in order to agree on new dates for the consideration of the reports and that the question be re-examined once that information was obtained.

66. If he heard no objection, he would take it that the members of the Committee wished to follow that course of action.

67. It was so decided.

The public part of the meeting rose at 12.15 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-fourth session

SUMMARY RECORD OF THE 1319th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 10 March 1999, at 3 p.m.

Chairman: Mr. ABOUL-NASR

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GE.99-40824 (E)

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Twelfth, thirteenth, fourteenth and fifteenth periodic reports of the Syrian Arab Republic (CERD/C/338/Add.1/Rev.1)

1. At the invitation of the Chairman, Mr. Al-Hussami and Mr. Nseir (Syrian Arab Republic) took places at the Committee table.

2. Mr. AL-HUSSAMI (Syrian Arab Republic) commended the high quality of the Committee's work, and emphasized Syria's strong commitment to the international treaties to which it was a party and the humanitarian and social obligations they entailed, and in the need for their universal application. As a founder member of the United Nations, Syria had participated actively in the drafting of the human rights treaties, including the Convention. Syria's position stemmed from a tradition of pluralism; all its citizens had lived together with many other groups and its society was therefore based on openness and tolerance. The idea of racial discrimination was alien to Syrian society and the phenomenon of fanaticism, whatever its manifestations, was unknown in Syrian history.

3. The provisions of chapter 4 of the Syrian Constitution contributed to the effective exercise of liberty and rights. Article 25, paragraph 1, provided that freedom was a sacred right and that the State safeguarded the personal freedom, dignity and security of its citizens; paragraph 3 that all citizens were equal before the law in regard to their rights and obligations; and paragraph 4 that the State safeguarded the principle of equality of opportunities for its citizens. Article 26 embodied the right of every citizen to participate in political, economic, social and cultural life in the manner prescribed by law. Article 35 in its paragraphs 1 and 2 enshrined the principles that freedom of belief was inviolable, that the State should respect all religions and that the State guaranteed freedom to engage in all religious observances in a manner consistent with public order. Article 36, paragraph 1, stated that work was the right and duty of every citizen, and that the State guaranteed work for every citizen. Article 37 named education as a right guaranteed by the State, free at all stages and compulsory at the primary level. Under article 45, the State guaranteed women every opportunity to participate effectively and fully in political, economic, social and cultural life, working to eliminate the restrictions which impeded their participation. Those were the most important constitutional provisions relating to political and economic, social and cultural rights and their protection in Syrian society.

4. He drew attention to the Government's efforts and legislation to prevent any discrimination against vulnerable groups in society, including children, women, industrial and agricultural workers, and students, to ensure that the treaties were translated into fact. Article 25, paragraph 4, through which the State guaranteed equality of opportunity for all citizens, was particularly significant. Syria did not claim never to encounter discrimination but did fight against any occurrence of discrimination in the

future by ensuring equal opportunity for all persons. Barring the way to future discrimination was at least as important as eliminating current discrimination, perhaps more so.

5. With regard to efforts made to ensure equal opportunity for vulnerable sectors he highlighted the monthly family allowance paid to all families with children and the role of the free or virtually free State-provided crèches in every district, institution and factory. The very nominal price of clothing and toys, and the fact that education was free at all levels, were further proof of equality of access and opportunity. The measures taken by the State to give women every opportunity to use their energies in political, economic, social and academic life and areas such as sport were too numerous to mention; while protecting the roles of mother, wife and sister, the State guaranteed effective equality of opportunity with men. Correcting a common misapprehension, he underlined that their religion and traditions in fact protected women and their rights and not the contrary.

6. Regarding the two main productive sectors, industrial and agricultural workers, the 1963 revolution had been brought about by and for them in order to bring justice to Syrian society. The 1973 Constitution and subsequent legislation had made up any shortcomings with regard to their rights to dignity, life, a livelihood, education, health and social welfare, to give them and their children every possibility for fulfilment and growth in all areas. He drew attention to the role played by non-governmental organizations (NGOs) and grass-roots associations in strengthening the fabric of society and democracy and particularly in striving to eliminate all forms of discrimination. Farmers' and workers' unions and unions of artisans, students and women all worked to uphold the rights of minorities and to ensure the implementation of those rights.

7. The Penal Code and other laws gave particular effect to the constitutional provisions on public freedoms, rights and duties and to both the spirit and substance of the norms of international treaties, including the Convention. Under article 307 of the Penal Code, any act or verbal or written statement intended to incite, or had the result of inciting, confessional or racial bigotry or strife among the various communities and component elements of the nation was punishable by a term of six months' to two years' imprisonment, in addition to a fine of up to 200 pounds and deprival of the right to hold public office and to be elected. Article 28, paragraph 3, of the Constitution prohibited moral or physical torture and degrading treatment, and such actions were punishable by law. Article 357 of the Penal Code provided that any civil servant who arrested or imprisoned a person in a manner not in conformity with the law could be punished with forced labour. Article 391 of the Penal Code stipulated that any unlawful violence committed with a view to securing a confession or information about a crime was punishable by a term of between three months' and three years' imprisonment; if the maltreatment led to illness or injury, the minimum prison sentence was one year.

8. The Israeli military occupation of the Syrian Golan Heights had been depriving Syrian citizens of the ability to enjoy their fundamental human rights in conformity with the Syrian Constitution and laws. The occupation subjected them to a colonial regime and aggressive ideologies based on

discrimination and racial and religious supremacy. The United Nations Special Committee to investigate Israeli Practices Affecting the Human Rights of the Palestinian People and other Arabs of the Occupied Territories had provided evidence that Israelis were violating all the rights relating to the inhabitants and land of the occupied Syrian Golan Heights on a daily basis. That included rights to property, housing, national identity, work, health, education and even clean drinking water. Their stranglehold on water resources was even leading to destruction of the natural environment. Removing Syrians from their homes and planting settlers had destroyed the traditional way of life in all but five villages in the Syrian Golan Heights, and the creation of 40 new settlements had changed the demographic composition. The Special Committee had concluded that the occupation underlay all the violations of human rights in the occupied Syrian Golan Heights, and the Syrian delegation felt it was within the mandate of the Committee on the Elimination of Racial Discrimination to speak out against violations in the region, with a view to defending the Charter and the principles of the United Nations, particularly the principle of the inadmissibility of the acquisition of land by force.

9. Mr. SHAHI (Country Rapporteur) welcomed the resumption of dialogue with Syria after an eight-year interval, and hoped that it would continue on a regular basis in the future. In order to place the fifteenth report in perspective, it was necessary to understand Syria's geopolitical situation as it had evolved over the years. Syria had a long history as a prize sought by conquerors and invaders, a fate which had continued into the twentieth century. It had assimilated or rejected all invaders, from the Egyptians to the Mongols, without losing its essentially Semitic character in terms of language and culture, but all had left their mark on the landscape of Syria; Damascus was the oldest continually inhabited capital of the world. Nonetheless, invasions and conquest were not conducive to an evolving process of protection and promotion of human rights.

10. Retracing events since Syria's independence in 1946, he said that it had been involved in four wars with Israel since then, with the threat of conflict ever present. Israel had occupied the Syrian Golan Heights since 1967, and had proclaimed its annexation in 1981, although that was considered null and void by United Nations organs which upheld the principle of non-admissibility of acquisition of territory by war. Syria played a key role in the Middle East. It had intervened to stop the civil war in Lebanon in 1976, providing most of the 300,000-strong Arab Deterrent Force which remained posted there, its military presence having been legitimized by the 1989 Taif Agreement, and had also sent troops to protect Saudi Arabia after Iraq's invasion of Kuwait. In 1991, Syria had agreed to direct negotiations with Israel at the Madrid Peace Conference, for a settlement based on United Nations Security Council resolutions 242 (1967) and 338 (1973). However, in 1996 the Israeli Prime Minister had rejected the land-for-peace formula as the basis of negotiations between Israel and her Arab neighbours; and the expansion of new Jewish settlements into East Jerusalem (Har Homa) in 1997 had paralysed negotiations between Israel and Palestine, with serious repercussions on the prospects for a comprehensive peace in the Middle East.

11. In its concluding observations on the report of Israel in 1991, the Committee had stated that the Government of Israel implemented neither the Geneva Convention Relative to the Protection of Civilian Persons in Time of War nor the International Convention on the Elimination of All Forms of Racial Discrimination, and had expressed great concern about the situation in the occupied territories.

12. The fifteenth report had not been drawn up according to the Committee's guidelines, nor did it contain the information requested by the Committee following its consideration of the eleventh report. The Committee's request for a more comprehensive report had not been met. He thanked Mr. Al-Hussami for his supplementary information, particularly regarding the Israeli occupation.

13. Although it was stated (para. 8) that the international conventions to which the Syrian Arab Republic had acceded became an integral part of its domestic legislation, it must be pointed out that the Convention was not self-executing and required national legislation for its full implementation. The contention that the absence of racial discrimination explained why there was no specific legislation to prohibit it (para. 10) was one which was unacceptable to the Committee: it did not mean that it could not occur in the future, nor did it absolve the State party from enacting the legislation needed to give effect to the Convention. It must be acknowledged that article 207 of the Syrian Penal Code, which on the whole met the obligations under article 4 of the Convention and provided for the remedies set out in article 6 did allow for the possibility of using the Penal Code against racial discrimination, although the State party reported that there had never been a single case of recourse to the courts by a Syrian citizen or a foreigner seeking compensation for violation of article 207 and that there had never been any complaints of racial discrimination.

14. Syria's accession to a number of international human rights instruments was evidence of its concern to protect human rights.

15. According to other documents that had come to his attention, the state of emergency had existed since 1948. Was that date correct? The explanation given for that long period had been that Syria had been a perennial theatre of war and tension. The provisions on the state of emergency had led to extraordinary powers being exercised by the State supreme security courts, whose procedures, it was feared, fell seriously short of international fair-trial standards. As justification, it was claimed that trials held in those courts were for terrorist and secessionist acts. There had been allegations that the Syrian security courts operated outside the legal system and that torture took place despite its being banned by legislation. Pursuant to article 4 of the International Covenant on Civil and Political Rights, during a state of emergency no derogation was permitted from the right to life, freedom from torture or slavery or freedom of thought, conscience and religion. When the eleventh periodic report of Syria (CERD/C/197/Add.6) had been considered, a number of Committee members had already inquired about the state of emergency. Could the Syrian delegation cast some light on the current situation?

16. By and large, Syrian legislation met the requirement under article 2 of pursuing a policy of eliminating racial discrimination and promoting understanding, and of undertaking to engage in no act of racial discrimination. During the consideration of Syria's eleventh report, it had been suggested that pursuant to article 2.1. (c), the Syrian Government should set up an interministerial body to review national and local policies to amend, rescind or nullify any laws or legislation which had the effect of creating or perpetuating racial discrimination. The fifteenth report was silent on that question. Information from the Syrian delegation would also be welcome on what concrete measures were taken pursuant to article 2.2. of the Convention to guarantee the full and equal enjoyment of human rights by certain racial groups and individuals belonging to them.

17. Regarding implementation of article 3, Syria had complied in full with its obligation to condemn the apartheid regime of South Africa, but the Committee's interest also extended to the elimination of any segregation of racial groups within the territory of the State.

18. As to article 4, Syrian law prohibited incitement to racial discrimination. The fifteenth periodic report said nothing about article 4, but the text of article 307 of the Penal Code - apparently referred to as article 207 in the eleventh report - made it an offence to incite confessional or racial bigotry or conflict among the various communities and component elements of the nation. Paragraph 5 of the eleventh report stated that Syrian law prohibited all forms of propaganda and associations based on concepts and theories advocating the supremacy of any race or any group of a particular colour or ethnic origin or which attempted to promote any form of racial hatred or discrimination, and that the establishment of any organization for the purpose of promoting racist ideology or instigating racial discrimination was also prohibited. Article 25 (3) of the Syrian Constitution stipulated that all citizens were equal before the law. It would therefore appear that the Syrian Arab Republic had implemented article 4 (a) and (b) and that article 307 of the Penal Code also covered the requirement of article 4 (c) of the Convention to prohibit public authorities and institutions, national and local, from promoting or inciting racial discrimination.

19. It had also been asked in 1991 whether article 207 of the Penal Code covered discrimination by both public authorities and private persons. That continued to be unclear from the fifteenth report. In reply to the question whether article 207 had been invoked in a court of law, the Syrian representative had stated on that occasion that that article was applicable by the courts but that no case of racial discrimination had ever been brought before them.

20. With reference to implementation of article 5, he drew attention to the Committee's previous request for more information on the implementation of article 5 (b) and (d) (ii), (iii) and (ix), notably whether there were specific laws governing the exercise of the civil, political, economic, social and cultural rights embodied in the Constitution and whether those rights were enjoyed without any discrimination. Concerning economic, social and cultural rights, he noted from the fiftieth report that any group could form a trade union and commented that in respect of article 5 (d) (iii) it had previously been observed by a member of the Committee that Syria had exercised

preferences similar to various other States with regard to the right to nationality. Referring to the statement by the Syrian representative during consideration of the eleventh report that the rights listed in article 5 (c), (d), (e) and (f) were regulated by various laws guaranteeing such rights, including the right to leave the country and return to it, he asked the Syrian delegation what exactly those laws were. He had noted that all citizens, including women, had the right to participate in the country's political, economic, social and cultural life, and welcomed the statement that there was compulsory primary schooling and free education at all levels.

21. Turning to implementation of article 6, he reiterated the question asked during the consideration of the eleventh report about what measures had been taken to inform the general public about the remedies available in cases of racial discrimination. Did citizens know that those remedies existed? It was difficult to know to what extent article 6 was implemented in practice because of the absence of complaints.

22. On implementation of article 7, the fifteenth report commendably contained a number of examples illustrating how Syria's schools and other educational institutions condemned racial discrimination and taught respect for human rights. The ruling Baath party's advocacy of human rights was encouraging.

23. With regard to the demographic composition of Syria, during its consideration of the eleventh report the Committee had asked whether Jews were excluded from the armed forces, whether their passports and identity cards mentioned their religion, and, if so, how that could be reconciled with the rights laid down in article 5 (d). The response had been that although there was no Jewish community as such in Syria, some Syrian citizens were Jews, that they freely practised their professions, engaged in trade and were exempt from military service, that their freedom of movement had not been restricted since 1976 and that passports made no reference to their religion. In 1948, the Jewish community in Syria had had 30,000 members. By 1991, most had emigrated, and there had been only about 5,000 left.

24. The fifteenth report filled the gap in the Committee's information about the number of Palestinians in Syria, with the figures provided in paragraph 11. As to their right to return to their homes and the issuing of special travel documents to enable them to travel abroad, the question was whether they had difficulty obtaining visas. During consideration of the eleventh periodic report, the Syrian representative had stated that the Palestinians were refugees, having been expelled from Palestine, and that their presence was provisional.

25. An assurance had been given in 1991 that certain gaps in the information supplied to the Committee would be remedied in the next periodic report. That had, however, not been the case, and it was to be hoped that that information would be provided in the next report.

26. Concerning persons of Kurdish origin in Syria, the World Directory of Minorities 1997 had reported there were 1 million Kurds in the country, or 8 per cent of the total population. Despite previous requests by the Committee for further information on the situation of persons of Kurdish

ethnic origin, no such data had been provided in the fifteenth periodic report. In particular, it was a matter of concern that in the early 1960s, as many as 140,000 persons of Kurdish origin had reportedly been deprived of the right of citizenship in Syria and that at present it was still not known how many Kurds living there were stateless. The Committee would welcome remedial action on behalf of any Syrian-born Kurds who had thus been rendered stateless. There were reports of bans on the use of the Kurdish language, on the establishment of Kurdish private schools and on publications of books and other printed matter in Kurdish, and of the blocking of passport renewal. The Committee hoped that the Syrian delegation could shed some light on those allegations by several human rights NGOs.

27. A number of reports had been brought to the notice of the Committee concerning violations of some of the human rights covered by article 5 of the Convention. They related to the incarceration of political prisoners, detainees, disappearances and unfair trials. The release, under a 1995 presidential amnesty, of 1,200 political prisoners who had been held because of their ties to the Muslim Brotherhood was a welcome development. According to the 1997 United States Department of State report, there were several hundred political prisoners, although the Syrian Government had contended that such persons had been arrested because of terrorist or other criminal acts. The Committee for Defence of Democratic Freedoms and Human Rights in Syria put the figure at 2,700, and the 1998 Human Rights Watch report had named a number of them. He welcomed the fact that Syria had received a delegation from Amnesty International in March 1998, noting that that NGO had subsequently called for the immediate release of prisoners detained only for their political beliefs and had submitted the names of 500 alleged political prisoners to the authorities, asking them to review the cases of those convicted and sentenced after unfair trials and to verify the whereabouts of those who had disappeared.

28. There were said to be continuing instances of disappearances of Palestinian refugees and Lebanese citizens at the hands of the Syrian security forces and transfer of persons from Lebanon to prisons in Syria. In 1997, four new disappearances of persons in Lebanon had been reported, one of whom had apparently been released. A Jordanian national was also said to be detained. The Working Group on Enforced or Involuntary Disappearances had stated that that person had been put on trial, after being detained for 15 years, and sentenced to death. Could the Syrian delegation provide information on that case? According to the Working Group, a substantial number of disappearances had occurred throughout the country in the early and mid-1980s. Some of the persons concerned had allegedly been members of terrorist groups; both Lebanese citizens and stateless Palestinians continued to disappear in Lebanon.

29. The 1998 Amnesty International report contained disturbing allegations of cases of persons arrested on political grounds, held without charges and detained after the expiry of their sentences, and of scores of disappearances in recent years. Twenty Kurds had reportedly been arrested in Al-Hasakah and Aleppo for organizing Kurdish cultural activities, 15 of them on the eve of the Kurdish New Year. Most of those arrested in 1996 had subsequently been released, which was welcome news. Many Palestinians arrested on political grounds in Lebanon and Syria in past years were still said to be held

incommunicado, their whereabouts being unknown. About 200 Lebanese nationals continued to be held in Syrian prisons. On 9 March 1998, Amnesty International had issued a statement welcoming the release of 121 Lebanese prisoners, which it had hoped would be accompanied by substantial legislative changes to protect human rights. The Lebanese detainees, most of whom had been held without charges or trial since the 1970s, had been released and handed over to the Lebanese authorities.

30. He was concerned at reports that military and State security agencies operated outside the legal system and often ignored the rights of suspects and detainees and that the emergency legislation authorized preventive arrests, overriding the Penal Code. There were allegations of poor prison conditions, arbitrary arrest, prolonged detention without trial and unfair trials. While the regular court system apparently displayed a large measure of independence, political connections sometimes influenced verdicts and there had been allegations of judicial corruption.

31. Although there had been some reports of violence against women, especially in rural areas, he commended the Syrian Arab Republic on its enlightened policy with regard to the emancipation of women and urged the authorities to speed up its implementation.

32. Although the State party's latest report was fragmentary, when taken in conjunction with previous reports and the delegation's introductory statement, it went some way towards filling in the gaps in the Committee's information on the Syrian Arab Republic.

33. Mr. VALENCIA RODRÍGUEZ noted that the Syrian report was relatively brief and failed to comply with the Committee's guidelines. He further regretted the lack of a core document and of data on the ethnic composition of the population.

34. According to the report, Syrian society was noted for its tolerance and lack of bigotry, a claim borne out by the country's historical status as a crossroads of civilizations and races. Today, however, the Syrian Arab Republic was suffering the consequences of foreign aggression and the adverse impact of the occupation of a large portion of its territory.

35. In its international policy, the Syrian Arab Republic had championed the standards of human rights and equality guaranteed in its Constitution, condemning racist regimes and opposing racism in general. International treaties were incorporated in domestic legislation and were directly applicable by the courts. He commended the programmes and activities described in paragraph 8 of the report.

36. Although the articles of the Penal Code cited in paragraph 10 were worded somewhat differently from article 4 of the Convention, the State party had made a commendable effort to honour its obligations under that article. However, its claim that the provisions of article 5 were covered by the Constitution and other legislation could not be verified in the absence of the relevant texts. The Committee would also like to see the legal instruments under which victims of acts of racial discrimination were entitled to seek legal redress.

37. Welcoming the assurance that Kurdish groups and the Jewish community did not suffer discrimination, he requested additional information on how their rights were safeguarded.

38. He praised the Government for its efforts in the area of housing and employment on behalf of the 350,000 Palestinian refugees. It was to be hoped that a just and permanent solution to their plight would soon be found.

39. Mr. NOBEL said that, according to the World Directory of Minorities, the Syrian Arab Republic was inhabited by Alawis, Kurds, Greek Orthodox and Catholics, Druzes, Armenians, Ismailis, Syrian Orthodox and Catholics, Turkomans, Circassians, Ithna`asharis and Jews. It was, in short, a highly multicultural and multi-religious society in which ethnic groups had lived side by side for centuries. It was therefore of the utmost importance that the Syrian authorities fulfilled all their obligations under the Convention, in both legislative and practical terms.

40. According to a report by the International Labour Organization (ILO) on Syrian implementation of ILO Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries, 750 permanent primary schools and 67 mobile schools in vehicles and tents had been provided for the Bedouin population. That was a highly commendable educational effort on behalf of a minority that had not even been mentioned in the World Directory. Were there any census figures for the Bedouin community? He also praised the establishment of human rights committees in every Syrian school and asked for more details on how they operated.

41. Large numbers of Kurds were said to have entered the Syrian Arab Republic illegally, fleeing from persecution in neighbouring countries. But reliable NGO sources alleged that they were actually the selfsame people who had been deprived of their citizenship in 1963 and had been living in the country for generations. He had personally received the same impression from conversations with Kurds in that category.

42. Amnesty International alleged that Khaled Daoud Shaikhu, Umar Ayoub Hamu and Mahdi al-Ali had been arrested for distributing tapes of Kurdish music. If the allegations were true, such action was a violation of article 2 (a) of the Convention. The Minority Rights Group claimed that Kurds still suffered inferior status, many still being denied citizenship, identity cards or passports. The Kurdish language and culture allegedly continued to be repressed and Kurdish names were replaced by Arabic names. However, the same NGO reported that ethnic discrimination had greatly diminished. According to the International Federation of Human Rights (FIDH), the Constitution had been largely non-operational since the 1962 Decree declaring a state of emergency. Restrictions had been placed on freedom of association and choice or change of residence. Letters, publications, radio broadcasts and other forms of communication were censored. Minorities such as the Kurds were often the main victims.

43. Mr. DIACONU said that cross-fertilization between different cultures was a striking feature of Syrian history and had bred tolerance and understanding among the peoples concerned. The delegation had acknowledged in its opening

statement that incidents of discrimination did occur and had assured the Committee that the authorities were fighting those trends. The country certainly had a clear-cut policy of opposing racial discrimination and segregation. He hoped that the statutes of the ruling Baath party had been translated into political action.

44. While most provisions of the Convention seemed to be covered by Syrian legislation, he had been unable to find a reference to racial acts of violence. According to paragraph 9 of the report, the Ministry of Culture prohibited films and tapes produced by bodies seeking to disparage certain races and communities. He asked whether the persons or groups concerned had been punished.

45. The Committee would appreciate additional information on the Kurdish minority. Were Kurds allowed to use their mother tongue freely on public and private occasions and were there schools providing instruction in the Kurdish language? Statistics from different sources on the number of Kurds living in the country were extremely contradictory, ranging from 160,000 to 1 million. Were there Kurdish refugees from other countries of the region living in the Syrian Arab Republic and, if so, what was their status?

46. He would also welcome additional information about the country's other ethnic minorities.

47. Mr. DE GOUTTES thanked the delegation for supplementing what had been a very brief and insufficiently detailed periodic report.

48. He had reservations concerning the statement in paragraph 10 that the absence of racial discrimination in the history of Syrian society explained the failure to promulgate legislation to address the phenomenon. However, he was heartened to note that racist acts or verbal or written statements and membership of racist organizations were punishable under articles 307, 308 and 109 of the Penal Code.

49. A Syrian delegation had assured the Committee in 1991 that the Kurds were fully integrated into Syrian society but Amnesty International, in its 1998 report, alleged that at least 20 Kurds had been arrested in the Governorates of Al-Hasakah and Aleppo for organizing Kurdish cultural activities. At least 15 had reportedly been arrested on the eve of the Kurdish New Year and been imprisoned in Fara Falastin, Adhra and Aleppo. He invited the delegation to comment on the allegations and drew attention to the statement on the Kurds (CERD/C/54/Misc.20/Rev.1) adopted by the Committee at its previous meeting.

50. In 1991, the Syrian delegation had informed the Committee that the presence of Palestinian refugees in the Syrian Arab Republic was a temporary phenomenon. He invited the delegation to comment on an allegation by Amnesty International that many Palestinians had been arrested in the Syrian Arab Republic and Lebanon for political reasons and were still in prison. In many cases, their whereabouts were allegedly unknown.

51. He asked the delegation to confirm that members of the Jewish community enjoyed full freedom of movement and that their religion was no longer mentioned on their identity cards.

52. Mr. GARVALOV asked whether the Greek Orthodox and Catholic community in Syria in fact represented an ethnic minority or were a religious group, as they were in Lebanon. Paragraph 3 of the report stated that racial discrimination was unknown in Syrian history and that racist acts were regarded as highly reprehensible. The Committee was on record as having expressed an unequivocal position in similar cases, namely that no country in the world was immune to racial discrimination.

53. In any case, even though it might appear that racial discrimination was absent from a society, it was still incumbent on each State party to enact such legislation, at the very least as a preliminary step. With reference to the statement (para. 10) that Kurds did not constitute a grouping, since they were found throughout the country and formed part of the fabric of Syrian society, did the State party believe an ethnic minority could only qualify as such if all its members lived in the same area? He pointed out that, according to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, human rights were individual, not collective, rights.

54. Lastly, referring to paragraph 6 of the report, he said that "the participation in the elimination of apartheid, of all policies and practices of racial discrimination or segregation and of racist propaganda" should be the cornerstone of the State's constitutional, legislative and judicial powers. Those powers in turn must be the cornerstone of the State, to which all other structures, including political parties, were subordinate.

55. Mr. AL-HUSSAMI (Syrian Arab Republic) said that the starting point for considering the situation in Syria must be the absence of discrimination in any form. Syria had always been a meeting point for ethnic groups, races and religions. It was the coexistence of cultures that had made Syrian society what it was - a society that had no experience of discrimination on ethnic or racial grounds. Nevertheless, it had tried to forestall the occurrence of racial discrimination in the future by referring to it in the Constitution and the Penal Code and by striving for equality of opportunity for all citizens in schools and employment and before the law.

56. A number of speakers had referred to the state of emergency that prevailed in Syria. The regional political situation, which deeply affected Syria owing to its own geographical situation, had never allowed Syria to relax its vigilance, and any country that believed its security to be threatened from within or without was permitted under civil and international law to declare a state of emergency. It would remain in place as long as the security situation did not change: with threats from terrorism, Israel, explosions, expulsions and assassinations, how was it possible to manage without it? The President had made it clear that it was applied within narrow limits and with great caution. There was no constraint on freedom: foreign Powers and the United Nations had missions in the country, Syrians were free to move about and express their views, and newspapers criticized the Government. The state of emergency had no effect on everyday life. It was a

deterrent, imposed in a security situation that gave Syria no choice. He would like the regional situation to improve so that the state of emergency could be lifted.

57. Descriptions of the situation of Kurds in Syria tended to be exaggerated and not to reflect reality. Syrian citizens of Kurdish origin were treated in the same way as any of the numerous cultural groups in the country. It was members of the Committee who continually alluded to racial differences. Syria did not carry out blood tests, for example, to establish people's racial origins.

58. In the 1950s, many Kurds had entered Syria through the Al-Hasakah region, near the Turkish and Iraqi borders. In 1962, an attempt had been made to determine the number of Kurds who had entered illegally. Those already registered before 1945 and anyone who could prove that they had been resident in Syria since before 1945 could be regarded as Syrian citizens. The same had applied to retired civilian or military State officials and to officials who had worked for the State for 10 years. Those who had been unable to provide documentary proof of residence had been deemed non-Syrians and registered as foreigners. The cut-off date for claiming citizenship had been extended to 1972 and, between 1976 and 1995, the numbers of registered foreigners had increased, because of marriage and births, from around 40,000 to around 67,000.

59. In addition to those registered, other foreigners had come into the region illegally after the census and by 1995 had numbered around 75,000. No country in the world handed out citizenship to illegal immigrants, yet Kurds and Turks living in the Al-Hasakah region, who had entered the country illegally and been unable to prove their Syrian citizenship, enjoyed certain rights and similar benefits to Syrian citizens. They had identity cards and passports, their births, marriages and deaths were entered on their passports, their children were enrolled at all levels of education and they were allowed to work anywhere in the public or private sectors. They were free to travel within Syria, depending on the type of identity card they held, and in certain circumstances could leave Syria, for example for medical care or study. Was that injustice or oppression? Even though they had slipped into the country, they were made welcome and treated with respect. The women of such groups were allowed to marry Syrian citizens and thus obtain Syrian citizenship; Syrian women, however, were not allowed to marry into such groups - in that way Syria protected both Syria women and Syrian nationality, as was its right to do.

The meeting rose at 6 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-fifth session

SUMMARY RECORD OF THE 1320th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 11 March 1999, at 10 a.m.

Chairman: Mr. ABOUL-NASR

later: Mr. YUTZIS

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GE.99-40841 (E)

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Twelfth to fifteenth periodic reports of the Syrian Arab Republic (continued) (CERD/C/338/Add.1/Rev.1)

1. At the invitation of the Chairman, the members of the Syrian delegation resumed their places at the Committee table.

2. The CHAIRMAN invited the Syrian delegation to continue its replies to the questions raised at the preceding meeting.

3. Mr. AL-HUSSAMI (Syria), returning to the question of the granting of Syrian nationality to foreigners, said that, in fact, article 3 of the Nationality Act No. 276 of 24 November 1969 stipulated that Syrian nationality could be granted to children of unknown parentage or to children born to parents who were stateless or of unknown nationality. However, although children born in Syria of unknown parentage, including abandoned children, were automatically regarded as Syrian failing proof to the contrary, in the case of children born to parents who were stateless or of unknown nationality, certain conditions needed to be met. The parents had to prove that they were residing lawfully in Syria at the time of the birth, that the child was legitimate, i.e. born to parents who were legally married, and that the birth had actually taken place in Syria, which must be attested through the presentation of a birth certificate in due and proper form issued by the competent authorities and indicating the date and place of birth and the name and sex of the child, and through the statements of two witnesses who must be over 18 years of age. The parents, if stateless, must be known and must prove that they had no nationality or did not know their nationality, which obviously necessitated a thorough investigation.

4. The aim of the Act of November 1969 was to provide a solution for individual cases on humanitarian grounds and not to facilitate the illegal infiltration into Syria of foreigners seeking to obtain Syrian nationality for political or ethnic reasons.

5. The Syrian authorities could not therefore be accused of having, in a way, "denied" nationality to persons of Kurdish origin. They had merely applied the law to them in the same way as any other foreigner.

6. With regard to the use of the Kurdish language, the public authorities did not interfere in the private life of foreigners living in Syrian territory: the Armenians and the Assyrians were completely free to speak their language among themselves and the same applied to the Kurds. However, the authorities imposed Arabic as the official language, which was only natural since, in principle, every State had an official language. Civil servants had an obligation to use the Arabic language in the discharge of their functions and were called to order if they did not comply with that directive. He read out a circular issued by a local administrative authority to that effect.

7. With regard to the problem of the Jews, it was common knowledge that they had come to the Middle East in order to escape the discrimination and oppression of which they had been victims in Europe. Some of them had been living in Syria for a long time. However, following the creation of the State of Israel, the Palestinian people, whom Syria regarded as its brothers, had been expelled from their land and Israel had subsequently attacked Syria on several occasions. In that context, it was understandable that the Syrian Jews were exempt from military service. However, that in no way implied that Syrian citizens of Jewish origin were subjected to any form of ostracism. There were many tradesmen, engineers, intellectuals and physicians of Jewish origin in Syria who were well regarded by all and enjoyed excellent living conditions. Nevertheless, Jews who wished to leave Syria were free to do so and thousands of them had already left the regions of Aleppo and Damascus.

8. In that connection, it should be noted that, since the accession to power of the Baath Party, a person's religion was no longer mentioned on his identity card.

9. The situation of the Palestinians was very different. Three hundred and fifty thousand of them had sought refuge in Syria and it was common knowledge why they had not returned to their homes. The Syrian authorities did not grant them nationality because it had been deemed preferable, with their agreement, for them to retain their identity. In order to travel, they could obtain special travel documents. That did not prevent them from being treated on an equal footing with Syrian citizens in all matters relating to employment, education, health, housing, loans, etc. There were many Palestinian physicians, lawyers and engineers in Syria and the Syrian authorities adopted a protective attitude towards them: Syria consistently upheld the cause of the Palestinians throughout the world with a view to enabling them to eventually return home and exercise sovereignty over their own territory. He added that the Palestinian refugees cost Syria a large amount of money and the meagre budget of UNRWA was far from sufficient to meet their needs.

10. The Special Rapporteur had reproached Syria for not having prepared its report in conformity with the Committee's guidelines and for having provided brief and fragmentary information. Although that criticism was well-founded, the Ministry of Foreign Affairs was working on the basis of information provided by the country's other ministries and, since the report under consideration was the fifteenth that Syria had submitted, it was understandable that the ministries concerned saw no point in providing the same information year after year. It had to be admitted that Syria rarely had any new facts to notify to the Committee in regard to racial discrimination. In a fraternal society in which all the communities lived together harmoniously, problems of discrimination were not a major popular concern and the Government saw no reason to promulgate legislation in that connection, even if the members of the Committee found that unacceptable. He would nevertheless transmit the comments of CERD on that subject to his Government.

11. With regard to the rule of law in Syria, the sovereignty of the law was guaranteed by article 25 of the Syrian Constitution and citizens whose rights had been violated could apply to the Syrian tribunals for redress. The case law showed that complaints of ordinary citizens could be upheld even against

the highest authorities of the State. He referred to several cases in which large indemnities had been paid by ministries to individuals in respect of various infringements of their fundamental rights.

12. He said that the Supreme State Security Court had been established following the proclamation of the state of emergency in the country. Like all the high courts, it consisted of three judges, one of whom was a military officer. However, the military judge did not represent the army during the proceedings; his role was to deal with any questions relating to the army, for example when the offence had been committed within the framework of military activities or when the offender was a member of the army. In view of the sensitive nature of the cases considered by that body, its judgements were not subject to appeal but could not be enforced until they had been ratified by the Head of State, who could annul or modify the verdict.

13. Rights of defence formed the subject of Decree No. 47 of 1968, which guaranteed respect therefor.

14. Turning to the question of the reports published by NGOs such as Amnesty International or Human Rights Watch, he emphasized that the Government was endeavouring to dialogue with those organizations by replying to the letters that they sent and, sometimes, by inviting them to Syria in order to visit prisons, meet representatives of various ministries or attend trials. Although acknowledging the progress that Syria had made in the field of human rights, those organizations published reports referring to events on the subject of which the State had already provided explanations which, in Syria's view, deprived those reports of any credibility. In fact, those NGOs were subjecting the Syrian State to real political blackmail.

15. He also mentioned the Committee for the Defence of Human Rights and Democracy in Syria, which he accused of being an illegal organization that had committed numerous crimes since the early 1980s and which was impeding the maintenance of the rule of law in Syria. Some members of that politically motivated organization had already been tried in public, not for political reasons but due to assassinations that had been committed both in and outside Syrian territory.

16. In response to Mr. Garvalov's question concerning the Greek Orthodox and Catholics, he said that they were regarded as a religious and not a racial minority.

17. The committees for the defence of human rights functioned within academic establishments, particularly primary schools, and consisted of representatives of students and the director of the establishment. They participated in activities such as the celebration of various international days relating to human rights, women and children, etc. and played a very important role through the social assistance that they provided for the most disadvantaged children.

18. In response to the question raised by Mr. Diaconu concerning the nomadic tribes, he said that those groups, which had lived in Syria for a long time,

moved from one region to another and from one country to another. Although it was difficult to persuade them to become sedentary, the State was endeavouring to provide them with access to educational and social services.

19. In response to a member of the Committee who had inquired about the specific legislation concerning economic and social rights, he quoted several articles of the Constitution, including article 13, which stipulated the need to take account of the economic integration of all the population groups; article 14, which governed real property; article 15, which made provision for compensation in the event of expropriation of land by the State; article 26, which recognized the right of every citizen to participate in political, economic and cultural life; article 44, which called for protection of the family as the basic unit of society; and article 45, which dealt with health protection.

20. He hoped that the explanations that he had given would satisfy the members of the Committee whom, moreover, he wished to thank for the objective, moderate and balanced nature of their comments. For its part, the Syrian delegation had done its best to be as objective and positive as possible.

21. He concluded by assuring the Committee that, in the next report, he would make every endeavour to reply to the other questions raised by the experts, whom he once again thanked for the attention that they had kindly given to the consideration of the situation in the Syrian Arab Republic in regard to racial and ethnic discrimination.

22. The CHAIRMAN thanked Mr. Al-Hussami for his replies and requested that the legal texts that had just been mentioned be reproduced in the next report of the State party so that they could be examined by the Committee.

23. Speaking in his capacity as a member of the Committee on the subject of a comment made by Mr. Al-Hussami concerning the justification for the reports required by the Committee, he explained that, although racial or ethnic discrimination might be alien to them, countries should nevertheless adopt legislation prohibiting such discrimination, even if only to be ready to face the possibility of the commission of a racially motivated crime. It was not sufficient to merely ratify the Convention. Legislation should be promulgated to ensure its implementation. A tribunal could not pass a sentence in the absence of legal texts stipulating that a specific crime should be judged in accordance with a specific procedure and punished by a specific penalty. It was therefore important that the Ministry of Justice should take measures to that end.

24. Mr. de GOUTTES, pursuing the same question, said that Mr. Al-Hussami's remark concerning the difficulty that the Ministry of Foreign Affairs experienced in obtaining detailed information from other ministries, which did not appreciate the usefulness of preparing detailed reports, enabled the Committee to obtain a better understanding of the way in which governmental reports were prepared. He drew attention to the fact that, if the ministries concerned did not cooperate on the pretext that the State had no problems in the field in question, some reports might become mere facades consisting solely of a list of legal texts and not giving an account of the effective implementation of the Convention.

25. The Ministry of Foreign Affairs should therefore encourage those ministries to cooperate by reminding them of their obligations under the te of the international instruments to which their country had acceded. The Committee was counting on the Ministry of Foreign Affairs to exercise its influence to that end.

26. Finally, he noted Mr. Al-Hussami's lively responses concerning the ro of the NGOs mentioned by the members of the Committee. In that connection, said that it should be understood that those NGOs were fulfilling their mission of defending human rights in conformity with a logic of their own, which was often disturbing for any State.

27. Mr. SHAHI (Rapporteur for the Syrian Arab Republic) said that the dialogue with the Syrian delegation had been very constructive as it had no only enabled the State party to obtain a better understanding of the workin methods and the views of the Committee but had also made the latter more aw of the difficulties encountered by States parties in fulfilling their obligations concerning the preparation of reports on the implementation of international instruments to which they had acceded. He was pleased that t dialogue, which had been suspended since 1991, had resumed.

28. With regard to the scope of the Committee's jurisdiction, he said tha there was inevitably some overlapping between questions falling within the mandate of CERD and those with which the Human Rights Committee was concern since article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination protected a large range of fundamental right and freedoms. In fact, it was part of the Committee's functions to ascerta whether those rights were respected without discrimination and whether they were enjoyed by all sections of the population, including foreigners. Henc whenever cases of racially motivated arbitrary detention, unlawful arrest o unfair trial were brought to the Committee's attention, the Rapporteur had obligation to mention them in his report.

29. The Syrian delegation had also expressed the view that the Committee transcended its field of jurisdiction in regard to the question of women. explained that he had been struck by the fact that the Syrian Government wa according such importance to the emancipation of women and was endeavouring ensure that they enjoyed political, economic and social rights on an equal footing with men. He did not think that he had encroached on the prerogati of the Committee on the Elimination of Racial Discrimination in regard to women by welcoming the progress that the Syrian Government had made on that question.

30. He also noted, among the positive points, that the Syrian Government taken an initiative favourable to the development of trade-union activities acceding to several ILO conventions, particularly the Collective Bargaining Convention, which would undoubtedly have a positive impact on the situation members of minority or ethnic groups who were members of Syrian trade union

31. The members of the Committee had requested the Syrian delegation to provide details concerning the effects of the application of the state of emergency on the exercise of fundamental rights. Although it had challenge the Committee's jurisdiction in that connection, the delegation had

nevertheless indicated that that measure did not involve any restriction of the exercise of human rights in Syria. He thought that the concern expressed by the members of the Committee was legitimate, since that measure involved the creation of special courts and the granting of extensive powers to law-enforcement agencies and had given rise to allegations by members of ethnic groups and others concerning unfair trials and other violations. Hence, there was reason to believe that rights provided for in article 5 of the Convention, such as the right to nationality, freedom of movement, association and expression, had not been fully respected. The explanations that the Syrian delegation had provided on that subject would be taken into account in the Committee's conclusions.

32. With regard to the implementation of the provisions of the Convention in the Syrian legal system, the situation seemed fairly satisfactory insofar as the Penal Code and the Constitution respected the spirit and even the letter of the Convention, article 4 of which had been incorporated, in its virtual entirety, in the Code. In particular, Syrian law prescribed penalties for persons who violated the provisions of the Convention, which could therefore be evoked effectively before the tribunals.

33. During the consideration of the report, it had been found that Syria was implementing only part of article 2 of the Convention and its delegation had undertaken to report that shortcoming to the Syrian Government. On the other hand, the application of the provisions of article 3 was remarkable. However, the Syrian authorities should take care to ensure that any inequalities of income did not lead to de facto ethnic or racial segregation in view of the diversity of Syria's population.

34. The implementation of article 4 had likewise been found to be highly satisfactory, while the implementation of article 5, numerous provisions of which had been incorporated in the Constitution, had not suffered greatly from the application of the state of emergency. The implementation of article 6 seemed to be guaranteed by article 207 of the Penal Code, while the implementation of article 7 was particularly noteworthy given the academic programmes and the bodies for the defence of human rights, as well as the activities to stimulate public awareness concerning racism and discrimination, which existed in Syria.

35. He thought that the balance sheet of Syria's application of the Convention in its territory compared favourably with that of the majority of the most progressive developing countries. Notwithstanding some shortcomings, Syria was on the right track.

36. With regard to the form and content of periodic reports, he suggested that the Syrian authorities should follow the Committee's guidelines in that connection which were intended to facilitate the consideration of reports. He advised them, for example, to refer back to previous reports, to update articles as needed and to avail themselves, if necessary, of the technical and advisory services of the Office of the High Commissioner for Human Rights. Finally, he hoped that Syria's next periodic report would be submitted on time and would contain the additional information requested by the members of the

Committee, particularly concerning judicial practice in regard to the implementation of the Convention and the legislation governing nationality, stateless courts and missing persons.

37. The CHAIRMAN expressed his gratitude to the Syrian delegation for its efforts and the spirit in which it had participated in that exchange of views with the Committee. He hoped that the dialogue which had thereby been established would continue. He said that the Committee had thereby concluded its consideration of the twelfth to fifteenth periodic reports of the Syrian Arab Republic.

38. The Syrian delegation withdrew.

The meeting was suspended at 11.50 a.m. and resumed at 12 noon.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING MEASURES AND URGENT ACTION PROCEDURES (agenda item 3) (continued)

Consideration of the situation in the Czech Republic (CERD/C/348)

39. At the invitation of the Chairman, Mr. Uhl, Mr. Somol, Mr Krpač and Mrs. Schellongová (Czech Republic) took places at the Committee table.

40. The CHAIRMAN pointed out that the Government of the Czech Republic had submitted document CERD/C/348 in accordance with decision 2 (53) of 11 August 1998 in which the Committee requested the State party to provide it with information on measures that might be contemplated in certain municipalities and that could lead to the physical segregation of some residential units housing Roma families. He was pleased to note that the high-level delegation representing the Czech Republic was headed by Mr. Uhl, the Czech Republic's Representative for Human Rights.

41. Mr. SOMOL (Czech Republic) said that his country's delegation consisted of Mr. Uhl, the Czech Government's Representative for Human Rights; Mr. Krpač, legal adviser at the Ministry of Foreign Affairs; Mrs. Schellongová, of the Permanent Mission of the Czech Republic to the international organizations at Geneva; and himself, in his capacity as Permanent Representative and Ambassador of the Czech Republic.

42. Mr. UHL (Czech Republic) said that the function of the Government's Representative for Human Rights, which he was exercising, had been created in September 1998 by the new Government in order to fulfil its obligation to submit reports to the bodies established under the terms of international instruments to which the Czech Republic was a party. Since the Representative had been explicitly instructed to ensure that all his country's overdue reports were submitted to those bodies in 1999, a report on racial discrimination in the Czech Republic, part of which would address the matter that the Czech delegation had come to explain, would therefore be submitted to the Committee before the end of the year.

43. Concerning that matter, he summarized the main information that the Committee had received from his Government in document CERD/C/348, which

showed that the measure that the Committee found disturbing was a unique case which, as far as the Czech Government was aware, concerned only the municipality of Nestemice, situated at Usti nad Labem in northern Bohemia.

44. He said that the Czech Government believed that the fence which the municipality of Nestemice (100,000 inhabitants) intended to construct in order to deny direct access to Maticni Street from two neighbouring residential blocks in which the overwhelming majority (90 per cent) of the tenants were Roma, did not truly constitute an act of segregation although it did violate fundamental rights of the human person, particularly the right to dignity.

45. In order to explain the situation, he added that the residents of Maticni Street had complained to the municipality of annoyance (noise, sanitation problems) caused by the lifestyle (large families, constant movement) or the economic activities (recycling of used appliances) of the Roma families occupying the neighbouring residential blocks. The families in question, who often consisted of unemployed persons, depended largely on family allowances. It was undoubtedly political opportunism, rather than racism, that had prompted the municipality of Nestemice/Usti nad Labem, which was controlled by the Civic Democratic Party, to decide in September 1998 to construct a fence without gates with a view to winning the votes of a xenophobic or racist fringe of the electorate in the elections scheduled for November 1998. He had visited the locality on several occasions in order to attempt to reduce the tension between the parties concerned.

46. Since the Committee's request for information, the Czech Government, having examined the situation of 11 January 1999, had adopted the resolution annexed to document CERD/C/348 which had been signed by the Deputy Prime Minister and Chairman of the Legislative Council, the Minister for Foreign Affairs, the Government's Representative for Human Rights and the head of the District Office in Usti nad Labem. That text expressed a desire to oppose the construction of the fence in order to protect the constitutional rights that might be violated by that measure, particularly the right to human dignity.

47. The Government had begun discussions with the local elected representatives and was attempting to implement a social programme proposed by a non-governmental organization. For example, a survey of the Roma families had been initiated with a view to providing the members of that community with employment, housing and retraining opportunities and granting Czech citizenship to those who did not already hold it. No one was seriously contemplating the construction of a fence; the real need was rather for community centres and, in particular, sports facilities. At all events, the Government would take legal action against the municipality if the latter decided to construct a fence. The fact that the Parliament had hitherto won most of the cases (19 out of 24) in which it had demanded the annulment of local decisions augured well, since the Government intended to use every legal means at its disposal in order to ensure that rights were respected in the matter in question. It would provide the Committee with all the information that the latter might need either during the session or in the report that it would be submitting to the Committee before the end of the year.

48. By way of historical background, he pointed out that, on the occasion of the consideration of the initial report and the second periodic report of the Czech Republic, he had submitted to the Committee an "alternative report" on the application of the Convention in his country, which had been prepared in collaboration with Mrs. Schellongová within the framework of the Helsinki Committee. His convictions concerning racism and xenophobia in his country had not changed since he joined the Government.

49. Mr. KRPAČ (Czech Republic) said that, in the light of the recommendations made by the Committee in March 1998, his country had initiated legislative procedures to obtain recognition of the Committee's competence to receive or consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation of any of the rights set forth in the Convention (art. 14). That procedure, which was in the hands of the Council for Nationalities, should be completed before the end of the year.

50. The CHAIRMAN said that he did not have a precise idea of the functions of the Czech Republic's Commissioner for Human Rights was. Did he act as an ombudsman? Moreover, what was the exact meaning of the Helsinki process?

51. Mr. UHL (Czech Republic) explained that the Helsinki Committee was affiliated to a non-governmental organization, established in the country, of which he had been a member until last September, his wife having been the vice-president. That non-governmental organization had submitted an "alternative report" to the Committee one year ago. The last elections had brought the Social Democratic Party to power and the present Government had decided to create the post of Commissioner for Human Rights. He said that he had been appointed to that post but was not acting as an ombudsman since he was not independent of the Government. In fact, the Commissioner formed part of a governmental team and presided over four councils: the Government's Consultative Council, the Council of National Minorities, the Inter-Ministerial Commission for the Affairs of the Roma Community and the Council for Human Rights. The latter Council, which had been established recently, was empowered to propose legislative amendments to the President and to suggest that the Government take executive measures in particular ministries. The President could refer questions concerning violations of human rights to the Council, which could also look into such questions on its own initiative, although it did not deal with individual cases of violations of human rights. The Government was currently studying a bill of law which provided for the establishment of a post of mediator or ombudsman and which was soon to be transmitted to the Parliament for approval.

52. Mr. Yutzis took the Chair.

53. Mr. DIACONU (Rapporteur for the Czech Republic) welcomed the fact that the Czech Commissioner for Human Rights had belonged to a non-governmental organization which, in his time, had criticized the Government. Mr. Uhl therefore knew better than anyone what the Committee expected of the Governments of States parties to the Convention.

54. He recalled that, on 11 August 1998, the Committee had decided to request the Government of the Czech Republic to provide it with information on

the measures that, according to disturbing reports, were contemplated in certain Czech municipalities and that could lead to a physical isolation of some residential units housing Roma families.

55. According to the delegation's reply, the Government viewed the proposal of the local authority at Usti nad Labem to construct a fence separating Roma families from persons of another ethnic origin as grave and alarming. Some declarations by the local authorities suggested that that decision might be revoked and the Czech Commissioner for Human Rights had just informed the Committee of the Government's determination to annul that decision.

56. Discussions had been held between the Government's representative, the members of the local authority and the Roma, the Roma tenants concerned having themselves entered into a dialogue with the representatives of the local authority through their own association. They had also removed the garbage littering the street, which was one of the reasons that had prompted the non-Roma residents to call for the construction of a fence. That demonstrated a desire to settle the dispute through moderation and conciliation.

57. The Government had instructed its representative for human rights to discuss with the local authorities the imperative need to respect human rights and had requested him to report to it before the construction of the fence began.

58. However, it might be wondered why the Government had decided not to examine the legal measures that would enable it to oppose the construction of that fence unless the work thereon actually began. Why had the Government not decided to contest the legality of that decision and why had it not demanded its annulment since, under the Czech constitutional system, there was apparently a procedure for the annulment of a decision taken by a local authority?

59. He noted that the resolution adopted by the Government on 11 January 1999 related to the position of the Czech authorities regarding the question raised by the Committee rather than to a clear position regarding the decision to build that fence. Moreover, the Government's reply seemed hesitant concerning the nature and the presentation of the circumstances that had led to that situation. Even though it was now certain, as the delegation had just confirmed, that the fence would never be constructed, the significant aspect, in the Committee's view, was the fact that a local authority had taken such a decision.

60. Although it was commendable that the Government seemed anxious not to detract from the town's autonomy, it should not be forgotten that the State and, consequently, the Government was responsible for the application of the Convention in its territory. In fact, under the terms of article 2, paragraph 1 (a), of the Convention, "each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation". Subparagraph (c) further stipulated that "each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the

effect of creating or perpetuating racial discrimination, wherever it exists". In other words, local autonomy could not justify lack of action in that case. The Committee had just received an assurance from the delegation that legal action would be taken, if necessary, in order to annul that decision.

61. The municipality of Usti nad Labem seemed to be the locality where the Czech authorities had the greatest difficulty in protecting and ensuring respect for the rights of the Roma. Moreover, in April 1994, the Czech Constitutional Court had been obliged to annul an order by that municipality requiring prior authorization for any temporary residence of more than five days. At the time, everyone had acknowledged that that measure targeted the Roma. Notices that had been posted in that town had also encouraged the Roma to leave the country for Canada and financial aid had even been granted to them to that end.

62. The Committee might take note of the determination that the Czech Government had shown in that matter and might request that the next periodic report of the Czech Republic, due in February 1998, contain precise information concerning the manner in which that question was settled. Other measures taken or contemplated by the authorities for the benefit of the Roma at the national level, in regard to citizenship, or at the local level, in regard to social programmes, should also be commended.

63. Mr. RECHETOV welcomed the fact that the report of the Czech Republic had accorded special attention to the questions raised by the Committee. He said that the concept of distribution of powers between a country's central and local authorities did not form part of the international human rights standards. Every State was responsible, under the international obligations that it had freely contracted, for the violations committed in its territory. He pointed out that article 4 (c) of the Convention stipulated that States parties undertook "not to permit public authorities or public institutions, national or local, to promote or incite racial discrimination".

64. He recalled that, during the consideration of the report of the Russian Federation, he had said that the acts of racial discrimination perpetrated against the Caucasians, even in remote areas of the country, should be condemned under international law and under the International Convention on the Elimination of All Forms of Racial Discrimination.

65. Noting that the delegation had mentioned persons living in Czech territory who had not been granted Czech citizenship, he wished to know whether the delegation was referring to the gypsies. How long had those persons been living in Czech territory? Had they arrived before the break-up of Czechoslovakia?

66. Mrs. McDOUGALL wondered whether the Czech Government knew of any other localities that were contemplating the adoption of a similar policy of segregation of the Roma. If so, had it decided to conduct investigations? What measures had the authorities taken to inform the local authorities of the obligations that the Government had contracted under the Convention? Had the Government informed the local authorities of its viewpoint concerning such practices and of its desire to take rapid and decisive measures to discourage any attempt of that type.

67. Mr. de GOUTTES said that the unfortunate decision taken by the municipality of Usti nad Labem was a particularly grave and disturbing matter since other similar measures had also been contemplated elsewhere, not only in the Czech Republic but also in other countries such as France, even if those measures had not been put into effect there. The solution adopted by the Czech authorities would be especially important as it would set a precedent and an example for other municipalities which might be tempted to consider such solutions.

68. In that context, he wondered why the Government had not decided to immediately institute proceedings for the annulment of the decision to construct the fence. Although he clearly understood that the Government had preferred to seek cooperation and dialogue and avoid humiliating the local authorities, he emphasized that, in his opinion, the annulment of that decision would have enabled the Government to give a clear affirmation of its refusal to compromise on the question of human dignity. It would also have enabled the Government to exclude any possibility of the construction of that fence.

69. He also wished to know whether the majority of the population of that locality were truly in favour of the decision taken by the municipality or whether they were now willing to adopt the Government's position. He welcomed the fact that the delegation had assured the Committee that the country would soon be submitting its periodic report and that the procedure for recognition of the Committee's competence in accordance with article 14 of the Convention had already begun.

70. Mr. SHERIFIS said that the Government had an obligation to respect the provision contained in article 2, paragraph 1 (c), of the Convention in which States were required to "take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists". What measures did the Czech Government therefore intend to take in order to avoid the recurrence of such situations elsewhere? He regarded that situation as unacceptable in the present day and age and said that every State party, including the Czech Republic, should take preventive measures in the field of discrimination.

71. He also requested the delegation to indicate whether the country had taken the measures recommended by the Committee on 18 March 1998 following the consideration of the periodic report of the Czech Republic, particularly those suggesting that "further action be taken by the State party to ensure that the provisions of the Convention are more widely publicized, particularly among minority groups, government officials and the police ... and to ensure the wide dissemination of ... the concluding observations of the Committee" (A/53/18, para. 135).

72. He welcomed the fact that the Czech Government had begun the legislative procedure for recognition of the Committee's competence to consider complaints from individuals (art. 14). Did the Government intend, as suggested by the Committee in March 1998, to "ratify the amendments to article 8, paragraph 6, of the Convention" (ibid., para. 136) concerning assumption of responsibility for the expenses of the members of the Committee by the States parties?

73. Mr. GARVALOV said that he was impressed not only by the promptit which the Czech Government had replied to the Committee's requests con the decision taken by a municipality, but also by the positive nature explanations. However, it should be pointed out that the Czech Republ State party to the Convention, must be aware of the binding force of article 4. Faced with that type of situation, the Czech State should reacted and immediately revoked the decision of the municipality of Usti nad Labem, since the fact that the Government had not wished to h the municipality implied that the decision by the town could still be as it had not been revoked.

74. Moreover, he found it unacceptable that laws could be infringed State or individual, even if local authorities so desired. Two import aspects of that matter should be borne in mind: firstly, the expulsio Roma families from their previous dwellings for non-payment of rent an secondly, the dumping of garbage on a public thoroughfare.

75. The CHAIRMAN said that the Committee would continue and conclude consideration of the situation in the Czech Republic at the next meeti

The meeting rose at 12.55 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-fourth session

SUMMARY RECORD OF THE 1321st MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 11 March 1999, at 3 p.m.

Chairman: Mr. ABOUL-NASR

later: Mr. DIACONU

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Costa Rica

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The meeting was called to order at 3.15 p.m.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING MEASURES AND URGENT ACTION PROCEDURES (agenda item 3) (continued)

Czech Republic (continued) (CERD/C/348)

1. At the invitation of the Chairman, the members of the delegation of the Czech Republic resumed their places at the Committee table.

2. Mr. UHL (Czech Republic), replying first to a comment by Mr. Rechetov, said he agreed that the Czech Government bore responsibility for the actions of the local authorities. As to his question on when various groups had come to the Czech Republic, he said that the Roma had settled there in the fourteenth or fifteenth century. Those living in Bohemia and Moravia had been the victims of genocide in the Second World War. There had been 7,000 Roma before the war, and only 500 afterwards. After the war, those living in the territory of the Czech Republic had generally been better off than those living in other areas. Prior to 1945, there had been more Roma in the parts of the country previously inhabited by Germans. As to the parts of Usti nad Labem where Roma lived, those who had come from Slovakia were regarded as foreigners: before the division of Czechoslovakia in 1992, many Roma had lived in the Slovak part, and it had been very difficult for them to acquire Czech citizenship. Just three weeks previously, the Czech Government had decided to abrogate what had been a rather unsatisfactory law and to introduce new legislation, which was currently before Parliament. Once that legislation had been passed, such persons would automatically acquire Czech citizenship without any complicated bureaucratic procedures. The Czech Government was attempting to help those persons who had arrived after the dissolution of Czechoslovakia to obtain citizenship or at least a permanent residence permit.

3. Turning to the text of decision 2 (53), as he understood it there were no other localities in the Czech Republic that intended to build such a wall or fence. There were many localities with such residential units, which were sometimes built by municipalities as low-income housing for people who could not afford the rent elsewhere. By law, no one could be evicted and simply made homeless, and the municipality was therefore under an obligation to offer modest, decent accommodation in which there might perhaps be shared bathrooms, but with running water, heating, etc. That was a social problem that did not concern the Roma. The Roma congregated in some localities of their own accord. Successive Czech governments had acknowledged that there was still discrimination against the Roma and had taken measures to combat it. Almost all discrimination concerned the private sector, where the State did not always have power to take action.

4. The Government had instructed him to draw up a plan of action to promote Roma integration in Czech society. The plan, produced with the help of a team of several dozen specialists, would be submitted to the Government on 31 March for adoption. The Prime Minister had also asked him to produce a draft for a Government decision on action to combat skinheads.

5. It was important to carry out prevention work in schools so as to ensure that the young generation did not embrace violent racist ideology. The Committee would be interested to learn that he had prepared a programme containing points incorporated from the Committee's recommendation on the need to hold training courses for judges and to introduce education in schools to combat xenophobia and promote tolerance.

6. On 11 January, the Czech Government had adopted a plan for a campaign to fight racism and encourage tolerance, implementation of which was currently being prepared in the media and in schools. Teachers, religious figures and heads of scout groups were being targeted to participate in the campaign. Teaching about racial and ethnic equality had to begin in primary school. Summer school courses on tolerance were offered for primary school teachers. Police officer training included courses in preventing xenophobia and fostering respect for human rights.

7. Replying to questions asked by Mr. de Gouttes and Mr. Garvalov on why the Czech Government had still not revoked the decision by the local authority of Usti nad Labem, he pointed out that the fence to be erected on Maticní Street would separate two housing blocks and that a separate footpath was to be built for access to the main street. The fence was to be erected solely because of the noise made by the children, more than 50 in number, when they played in front of the four neighbouring single-family dwellings, which were inhabited by non-Roma residents. Those four families did not consider themselves to be racist; they simply objected to the noise. The explanation given by the municipality was that in any case, it had been a bad idea to crowd so many people into residential blocks, but that the decision had been a welfare measure and had not been motivated by racist sentiment; nor had the plan to erect a fence had anything to do with racism. He was in fact convinced that, in the end, the municipality would decide against building the fence. Incidentally, the Committee's decision 2 (53) was itself unclear, because the English version spoke of "segregation", whereas the French version spoke of isolation (isolement), thus suggesting that even the Committee was not entirely certain whether it was asserting that segregation was really at issue.

8. Regarding the question by Mr. de Gouttes on the attitude of the local population, the persons in the four neighbouring single-family dwellings had not requested the construction of a fence, but of a wall four metres high. Needless to say, a small percentage of the total population of the town of Usti nad Labem wanted the gypsies out, and were pleased about the plan for the fence. An equal number of persons saw a risk of racism; the vast majority was indifferent.

9. Replying to the question by Mr. Sherifis on what the Czech Government was doing to prevent similar cases elsewhere, he said that the government projects to which he had just referred would help prevent their recurrence. The Czech Government wanted to make the Roma population feel at home. The aforementioned plan of action was the best way of achieving that goal, which was one of integration and not assimilation. It was a courageous undertaking, because many people wanted minority groups to abandon their culture and language. It was important for Roma to be proud of their origins and to make their contribution to Czech society.

10. In his view, the Convention had not been published sufficiently. Of course, it had appeared in the Official Gazette, and it had been issued by the Ministry of the Interior for the police. The country report and the Committee's concluding observations could be consulted on the Internet and were also broadly distributed by the Ministry of Foreign Affairs. He himself had made those documents available at the Czech Department of Commerce, which was working to prevent certain shops, restaurants and discotheques from discriminating against Roma. If there was a sign banning Roma from entering, the State prosecuted, although legally speaking the matter was complex. Perhaps more effective measures needed to be adopted to help combat the phenomenon in the courts.

11. In closing, he said it was difficult to consider the issue that had been raised without bearing in mind the social context.

12. The CHAIRMAN, speaking in his capacity as a member of the Committee, said that he found the analysis he had just heard unconvincing. The Czech representative had acknowledged that there were problems and had said that cases would be brought to court. Yet if such persons did not even have money to pay their rent, it was difficult to imagine how they pay lawyer's fees. The onus should not be on the victims to lodge complaints. If the Government knew that such incidents were taking place - and the Czech representative's remarks suggested that it did - it was duty-bound to take immediate action to stop them and to punish those responsible. The residential blocks had been built specifically for the Roma, because although ostensibly they were for anyone who could not pay rent, in actual fact 70 to 80 per cent of those living there were Roma. The Czech Government must bring the weight of the Convention to bear in preventing the fence from being built. He found it difficult to believe that Roma children were the only ones who made a noise when they played outside.

13. The Committee would not be satisfied unless the plan to erect a fence was immediately cancelled, and it looked forward to reading in the next report that it had in fact been revoked by order of the State in accordance with the Convention. The matter was a clear-cut racial problem and had to be dealt with as such.

14. Mr. DIACONU said that the Committee's dialogue with the delegation had been productive and oriented towards practical action. He took note of the Government's undertaking to comply with the provisions of the Convention and take action on behalf of the disadvantaged Roma minority. He wished the Czech authorities every success in implementing their plan.

15. Mr. UHL (Czech Republic) said that his purpose in appearing before the Committee had not been to defend a wall or a fence but to describe the Government's measures to bring down barriers, to promote tolerance and to eradicate xenophobia. The authorities had adopted a cautious approach because they were convinced that that approach would eventually prove more effective in eliminating racial discrimination as defined in article 1 of the

Convention. The Committee's ongoing support and constructive criticism would assist the Czech authorities in their efforts to alert the general public to the dangers inherent in racist attitudes.

16. The Czech delegation withdrew.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Twelfth, thirteenth, fourteenth and fifteenth periodic reports of Costa Rica (CERD/C/338/Add.4)

17. At the invitation of the Chairman, Mr. Diaz-Paniagua, Mr. Guillermet and Mr. Penrod (Costa Rica) took places at the Committee table.

18. Mr. DIAZ-PANIAGUA (Costa Rica), introducing and updating his country's report, said that his Government welcomed the opportunity to engage in a constructive dialogue with the Committee in order to undertake an objective assessment of anti-discrimination policies and measures in support of vulnerable groups in Costa Rica.

19. Sustained economic growth in Costa Rica in recent years had had a positive social impact. Urban unemployment had declined by 5.4 per cent in 1998. Costa Rica belonged to the group of States with a high rate of human development and ranked among the top few developing countries in terms of its literacy ratio and life expectancy.

20. Almost 95 per cent of the population of Costa Rica was of mixed Spanish and indigenous origin, with a subsequent African and Asian racial input. About 3 per cent of the population, or 100,000 people, were Afro-Costa Rican, 1 per cent were indigenous and another 1 per cent of Chinese origin. The figures were unfortunately little more than estimates because no information on ethnic background had been collected in national censuses and statistics since 1950. The Government was fully aware of the Committee's guidelines but a statistical breakdown into racial categories was viewed as inconsistent with constitutional guarantees of equality in a society most of whose members had ancestors of mixed blood.

21. Costa Rica traditionally gave refuge to victims of natural disasters, civil strife and economic difficulties in neighbouring countries and had recently admitted a large number of Nicaraguans. Legally resident Nicaraguans accounted for 56 per cent of the total number of resident aliens; unofficial estimates put the total number of legally resident and undocumented Nicaraguans at over half a million. It was hoped that many of them would regularize their status under the six-month migratory amnesty decreed in the wake of Hurricane Mitch so that they could be placed on the same footing as Costa Ricans in terms of guarantees and obligations. By 8 March 1999, 42,353 applications for residence had been received and it was estimated that some 300,000 Central Americans would be registered by the end of the amnesty period.

22. Article 33 of the 1949 Constitution stipulated that everyone was equal before the law and prohibited any discrimination that was incompatible with

human dignity. Pursuant to article 7 of the Constitution, the Convention took precedence over domestic legislation. As a result, any law or practice that was inconsistent with its provisions was automatically rendered void. Any inconsistent rule or practice introduced after its ratification, even if enacted by the legislature, was also rendered void and could be challenged on grounds of unconstitutionality. Victims of a violation of the provisions of the Convention were free to institute judicial and administrative proceedings to obtain redress, for example in the form of an amparo application to a specialized division of the Supreme Court.

23. International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries also enjoyed superior legal status and the Constitutional Court (Sala Constitucional), a division of the Supreme Court, had decided in June 1998 that some of its provisions took precedence over the rights and guarantees recognized by the Fundamental Charter for indigenous peoples.

24. Costa Rica was aware that implementing legislation was required to ensure full compliance with the Convention and had adopted legislation on behalf of the indigenous population and criminal provisions to punish discrimination. Under Act No. 4430 of 21 May 1968, as amended by Act No. 4466 of 19 November 1969, it was a punishable offence to deny individuals access to associations, places of entertainment, hotels and similar establishments, clubs and private educational establishments on grounds of racial discrimination. First-time offenders paid a fine. A first repeat offence entailed closure of the establishment for six months and a second entailed definitive closure. Under article 371 of the Penal Code, discriminatory acts by persons in charge of public or private institutions or industrial or commercial establishments were punishable initially by a fine and subsequently by suspension from duties for a specific period. Under article 372 of the Penal Code, directors or members of organizations of an international character which engaged in trafficking of slaves, women, children or drugs or in acts of terrorism, or which breached the provisions of human rights treaties ratified by Costa Rica were punishable by a term of imprisonment. Under article 272, members of domestic organizations that promoted the commission of acts of racial discrimination were also punishable by a term of imprisonment. Persons who publicly praised the commission of an offence or a person convicted of an offence were punishable by a fine or a term of imprisonment under article 274 of the Penal Code. Other provisions punished co-perpetrators and accomplices as well as incitement to criminal acts. Article 387 punished incitement to hatred of a person or institution in public places or through the press or other writings.

25. The Afro-Caribbeans who had come to Costa Rica in the nineteenth century to work on the railways and in banana plantations had preserved their language and culture. However, literacy campaigns during the past 40 years had jeopardized bilingual education in Limón Province. The State was currently investing heavily in a bilingual education programme for all educational establishments, focusing on Limón Province, and there was a trend towards closer contacts between the culture of Afro-Costa Ricans of Jamaican origin and that of the Central Valley. Although Afro-Costa Ricans were concentrated on the Caribbean coast, they also lived in other parts of Costa Rica.

26. The Constitutional Court had heard a number of cases involving charges of racial discrimination by Afro-Costa Ricans. In 1993, Mr. Henry Jones Williams, a teacher, had filed an application for amparo, alleging racial discrimination by the principal of his school. The Constitutional Court had dismissed the application for lack of proof of differential treatment. In 1995, Ms. Carolyn Markland Francis, a model, had filed suit against Mr. José Tabora Wilson for allegedly excluding her from a fashion show on account of her race. The Court, noting that the plaintiff had failed to challenge the arguments adduced by the defence, had dismissed the case.

27. In 1998 the Constitutional Court had heard a case brought by persons of colour against the owners of a dancehall, "El Coyote", alleging that they had been denied access on grounds of public safety and morals rather than racial discrimination. The judgement of the Court had been based on the principle that the establishment of categories as the basis for differential treatment of persons belonging to a particular ethnic group in a manner contrary to human dignity was impermissible since such action was arbitrary and unconstitutional. The Court had commented at length on the unacceptability of racial prejudice and discrimination and had referred explicitly to the Convention. It had unfortunately been unable to grant the application for amparo because the plaintiffs and witnesses had failed to respond to repeated requests for proof in support of their allegations. However, it had ruled that when an establishment used permissible restrictions on the right of admission as a pretext for racial or ethnic discrimination, its actions were illegal. It had thus set a precedent for subsequent cases.

28. Two of the 57 members of the Costa Rican Parliament were Afro-Costa Ricans and an Afro-Costa Rican woman had held the office of Minister of the Interior from 1994 to 1998.

29. While the Office of the Ombudsman, established in 1992, had received no complaints of racial discrimination from Afro-Costa Ricans, it had received a variety of complaints from the indigenous population concerning land rights, the right to be consulted, access to institutions, the right to health, education and self-determination, and lack of control over sales of alcoholic beverages in indigenous areas.

30. A bill on the "Autonomous Development of the Indigenous Peoples" was being drafted with a view to implementing the Convention and ILO Convention No. 169. It recognized the autonomy of the indigenous peoples, their right to assert the equal status of their cultures, the right to administer their own lands, to prepare a development plan and to take development decisions consistent with their traditions and customs. In 1993 the Subcommittee on Indigenous Affairs of the Legislative Assembly had prepared a preliminary draft and consultations concerning the bill had been held in 40 indigenous communities. Each community had elected a representative to speak on its behalf and in September 1997 a National Forum of Indigenous Cultures had been attended by 39 elected representatives to discuss the final version of the bill, which was subsequently returned to the Legislative Assembly.

31. The President of the Supreme Electoral Tribunal had noted in his report that the members of the indigenous communities had come to the consultations very well prepared and had shown, not least through the opposition put up by

certain sections of the indigenous population, how interested they were in new legislation on their situation. Despite some attempts on the part of members of certain institutions working with indigenous populations to sabotage the consultations, meetings had been very well attended. The bill had subsequently been adopted unanimously by the Legislative Assembly's Permanent Commission on Social Affairs and was now awaiting enactment.

32. The Ombudsman had attributed a significant fall in the number of complaints from indigenous communities to the success of the consultations and the great efforts made to publicize them among those communities. Unfortunately, the consultation process had been marred by disputes among different indigenous associations and groups and among national institutions, over which groups were the legitimate representatives of the indigenous peoples and which body should be responsible for carrying out the consultations. The drafting process might also have been adversely affected to some extent by various personal differences among the indigenous leadership. Overall, however, the consultations in connection with the bill had been a valuable learning experience and the Ombudsman had recently suggested setting up an inter-agency commission, with indigenous representation, to devise a consultation framework that could be applied to various aspects of the life of indigenous peoples. Any recommendations by the Committee in that respect would be conveyed to his authorities.

33. If the bill was enacted, it would replace the traditional "indigenous reservations" by indigenous territories, registered with Indigenous Territory Management Boards, each of which would be democratically elected by, and representative of, an indigenous community. Under the bill, indigenous lands would be inalienable, unattachable, imprescriptible and untransferable to non-indigenous persons. Any development would be subject to consultation with a territory's inhabitants and any exploration or exploitation of sub-surface natural resources would be subject to legislative approval and to consultation with the relevant Management Board. The territories would also be exempt from tax and moves would be made to recover lands occupied by non-indigenous persons within indigenous territory.

34. With regard to health, the bill recognized indigenous people's right to use traditional medicine and guaranteed equality of treatment with the rest of the population, by requiring the Ministry of Health and the Costa Rican Social Security Fund, inter alia, to hire staff with knowledge of indigenous languages, prioritize indigenous persons in recruitment and authorize free social security to indigenous persons on request.

35. A new Department of Indigenous Education would be established, under the Ministry of Public Education and the direction of a member of the indigenous community, with responsibility for programmes aimed at strengthening indigenous culture and informing the rest of the population about that culture. The bill provided for compulsory teaching of the indigenous language at all levels of State education provided in the indigenous territories.

36. The bill required the Ministry of Housing to set aside funds for the building of housing in indigenous territories, in consultation with the Management Boards and taking account of indigenous architectural styles and materials. It also required that compensation should be paid for any

ecological damage caused to the indigenous territories. With regard to the administration of justice, the bill recognized the application of indigenous customary law and provided for its codification.

37. A National Fund for Indigenous Development would be set up to assist indigenous communities with sustainable development projects, training scholarships, the recovery of indigenous lands owned by non-indigenous individuals and the administration of the Management Boards. Lastly, the National Indigenous Affairs Commission (CONAI) would be replaced by a National Indigenous Institute. The proposed legislation was in many respects innovative and could well yield positive results.

38. Other recent developments included the Constitutional Court's 1997 ruling that the Ministry of Culture's reduction in CONAI's budget was in breach of ILO Convention No. 169, and the Ombudsman's programme of support for local initiatives to solve the problems of indigenous communities, which aimed to establish an indigenous rights protection network by training local leaders, especially women, who would put pressure on the relevant government agencies to meet their obligations towards the indigenous communities.

39 The work of the Department of Indigenous Education was beginning to bear fruit, and the number of schools in indigenous communities had increased from 119 in 1995 to 137, with 5,397 students. In the health sphere, there were now eight basic health-care teams in operation, and the Ombudsman had recommended the establishment of an integrated local health-care system to coordinate government and traditional community health-care provision.

40. In conclusion, he informed the Committee that the drafting of the periodic report had involved broad-based intersectoral consultation and coordination; the report had been distributed to interested NGOs and published on the Internet.

41. Mr. YUTZIS (Country Rapporteur) said that the very comprehensive oral report might usefully have been submitted in advance. It was, in effect, a second report and would be difficult to analyse immediately. Praising Costa Rica's long tradition of democracy, he noted that the Convention took precedence over domestic law, and welcomed the legislation on women, the establishment of the National Indigenous Affairs Commission (CONAI) and the institution of the Office of the Ombudsman. Costa Rica's signing of ILO Convention No. 169 would provide an incentive for the further development of indigenous issues, a matter to which Costa Rica clearly attached great importance. The migratory amnesty decreed in February 1999 was a welcome development.

42. On the negative side, the situation of refugees and immigrants generously taken in by Costa Rica was not always favourable despite the fact that Costa Rica did not lack experience in dealing with such groups. Common problems were discrimination in employment, health, education and housing, and immigrants were frequently stereotyped as "criminals". Nicaraguans seemed to experience the greatest difficulties. He acknowledged, however, that the State party was aware of what it described as "the defencelessness of undocumented immigrants" (para. 16).

43. He referred to Amnesty International reports of alleged intimidation, including death threats, against a Honduran, the wife of a Honduran intelligence service interrogator, in 1996, which the authorities had taken no steps to prevent, following which she had taken refuge in a European country. He wondered if the State party could provide any information on that case.

44. Immigrant labour had been exploited in the period under consideration by latifundistas producing sugar cane and citrus fruits (in the north), coffee (various regions) and bananas (Atlantic region). Some of the companies involved had been transnational corporations, which meant that the State must to some extent have been aware of what was happening. How far did such demand for agricultural labour influence Costa Rica's policy of openness to immigrants? What special measures existed to protect employees in those sectors? What contribution did those sectors make to structural solutions to the problems arising from inflows of immigrants? Was there any effective policy of preventing discrimination against immigrants and if so how widely was it publicized and what results had it had? What strategies did the State make available to immigrants to enable them to organize and defend their own rights?

45. New arrivals had reportedly had problems obtaining work permits and he asked what measures had been taken, in particular, to help new immigrants from Colombia, Peru, Liberia, Sierra Leone and the Russian Federation. Were reports that Central Americans were given preference in obtaining work permits true? It had also been reported that Cubans found it hardest to get work permits and that Nicaraguans had been the victims of violence and sometimes - in the case of those without documents - deportation.

46. The bill for the Autonomous Development of the Indigenous Peoples was of great importance. However, in the past, a somewhat "integrationist" approach had been taken to the application of the law to indigenous peoples. Debate had long raged in Latin America over the concept of mixed descent (mestizaje), which seemed to be used to play down the existence of indigenous communities. Yet those communities were the poorest and most marginalized in Costa Rica, with living conditions as bad as any in the poorest countries of Central America.

47. The use of the word "Indian" in paragraph 21 of the report was perhaps a lapse, but it was nevertheless regarded as a racist term by indigenous people. Furthermore, the delegation had appeared to take a rather pejorative view of indigenous communities when, in its oral presentation, it had blamed disputes among group leaders for the failure of some aspects of the consultations on the bill for the Autonomous Development of the Indigenous Peoples. A further instance of that attitude was to be found in paragraph 22 of the report, which explained the land issue as a product of "the internal weakness of the indigenous communities, which were unable to defend themselves on their own". That stood in marked contradiction to the references to indigenous peoples' participation in the consultations on their rights. In modern times, the problem had been a lack of resources, rather than of physical defences, to ensure a genuine transfer of reservations to the indigenous communities.

48. Despite legal demarcation of indigenous reservations (para. 23), the lands only passed into indigenous hands after expropriation from

non-indigenous proprietors. What percentage of lands legally declared reservations was effectively in indigenous hands? What time-limits were specified by law to effect expropriation from non-indigenous landowners in those territories? How many indigenous families living in reservation areas had no land? How many indigenous families lived outside the reservations and possessed no land within the reservations or elsewhere? What provisions existed for the allocation of land holdings within indigenous reservations once the land had been expropriated, and to what extent was there State control over allocation? According to CONAI data, around 50 per cent of land declared by law to belong to reservations was not in indigenous hands. The issue of land was a most important one for indigenous people, both for their subsistence and for the maintenance of their cultural identity. According to NGO estimates, around 50 per cent of indigenous persons of working age possessed no land. The problem was aggravated by population growth which meant that indigenous-owned land had to be continually divided up into smaller holdings, decreasing its productive capacity. As he interpreted it, the increased distribution of land to indigenous peoples was achieved by subdividing land they already possessed rather than by providing them with access to new land within the reservations which remained in non-indigenous hands.

49. He welcomed the emphasis in the oral statement on the inalienable, imprescriptible and non-transferable character of those lands, but asked how the State was dealing with the problem of access to credit for indigenous people, pointing out that, since land was held under collective title it could not be sold nor could the indigenous holders be alienated from it in any way, which meant that it was of no use as a guarantee for credit transactions. In reality, indigenous people had no opportunity for access to credit, nor did they have insurance for their harvests or products, insurance premiums being too high for small peasant producers. What were the State's plans for permanent technical advisory services, which would systematically include indigenous producers? Indigenous peoples ought also to have access to the kind of allowances and incentives given to farmers living in areas near the reservations, which was apparently not currently the case. What aid or incentives were they given for marketing their products? The rapid exhaustion of the soil by "slash and burn" techniques and the lack of options for fair marketing of their agricultural products further inhibited the development of a production economy and perpetuated the subsistence economy.

50. With regard to the Talamanca case, the Committee was aware of the tensions related to oil prospecting. The persons who had attacked the indigenous community were reported to have been arrested and brought before the courts. What action had the courts taken?

51. With reference to article 5 of the Convention, the health of the nearly 40,000 indigenous people and health care provision for them was a major cause of concern. What was the investment budget for the indigenous areas? How many clinics were there? Several of them were apparently not located in indigenous areas and access to them was difficult for indigenous persons. Moreover, he had information that in recent years the few health centres located in indigenous territories have been shut down; some centres had been created on the outskirts, but they were ill-equipped and had only minimal staff - seldom including indigenous persons - who made sporadic

visits. NGO reports particularly mentioned respiratory, dermatolog gastro-intestinal diseases, snake bites and malnutrition among the Bribri, Teribe, Guaymí, Huetar, Maleku, Chorotega and Boruca ethnic living in 22 reservations. There were many first-hand witness acco great sufferings of the indigenous community.

52. He welcomed the information provided orally on efforts to add issue of black persons in Costa Rica, which had been omitted from t The Committee required data on the social situation of the black po although he did not want to overstate the issue since they were not great numbers. However, it was vital to have details not only of t framework, under which they and other ethnic groups were covered, b the situation in practice in order to help the Committee understan position.

53. Regarding the case brought by persons of colour for denial o a dancehall, although the final ruling had set an important precede concerned by the implications of the plaintiffs' reported inabilit evidence. Had they failed to cooperate with the authorities? Had known how to present a case or had genuine difficulties in obtaini aid? Without prejudging the issue, the Committee wished to know wh Constitutional Court had been unable to obtain evidence. Such att detail showed to what extent the Committee took the State report a implementation of the Convention seriously.

54. Mrs. SADIQ ALI asked why, despite the law passed by the Gove 1977 creating indigenous reservations and authorizing measures to indigenous languages and cultures, only six languages had survived 12 ethnic groups. Most of the land on many reservations was appar hands of non-indigenous persons, and other reservation lands were by mining and petroleum prospection, which had been sanctioned by amendments to the 1977 law; could the delegation clarify the issue Ratification of ILO Convention No. 169 and its domestic legal stat consolidated the indigenous movement and led to indigenous demands laws affecting them be updated. The law of 1977 envisaged changes territorial rights, but it had virtually never been applied since inadequate measures for eviction, due process and so on. She hope recent election of a new Government and Legislative Assembly would setback for the bill for the Autonomous Development of the Indigen

55. Mr. de GOUTTES welcomed the updated information provided and announcement of new projects, particularly for the benefit of indi peoples. There were several positive developments, particularly C declaration under article 14, recognizing individual communication found many passages of the report exceptionally frank, particularl discrimination against indigenous persons and illegal immigrants, results in the education and training of indigenous people.

56. The Office of the Ombudsman was an important institution, bu information was needed on how many complaints of ethnic or racial discrimination had come to the Ombudsman's attention. Were there grounds for the popular belief that Costa Ricans were ethnically d

from other Central Americans (para. 10)? Was the evaluation and review of current migration policy (para. 17) intended to make it more open or more restrictive?

57. The legislation referred to in paragraphs 20 to 90 appeared to cover the requirements of article 4 of the Convention, but were the spreading of racist ideas and membership of racist organizations actually punishable offences under the Penal Code? The Committee needed to know the extent to which domestic legislation was compatible with the Convention.

58. The information on various remedies (paras. 131 to 179) was too general. He also regretted that there were so few examples of prosecution and sentencing, the only judgements specifically referred to being the dubious decisions mentioned in paragraphs 90 and 91. He would like more information on other judgements.

59. Mr. VALENCIA RODRIGUEZ, referring to the interpretation of article 33 of the Constitution according to which differences in legal treatment should not be arbitrary but based on considerations of rationality, asked whether any distinctions other than the example given in paragraph 88 of the report were legally acceptable. He welcomed the Government's measures to overcome resentment and prejudices against the hundreds of thousands of refugees and externally displaced persons in the country by enabling them voluntarily to acquire temporary or permanent residence status (para. 13). How had the programme been operating, and what were its prospects for the future? Apparently the situation of illegal immigrants was precarious and they were subject to discrimination by the rest of the population, including the authorities. It was a point that needed emphasizing so that current efforts would be strengthened. Undocumented and potential immigrants should perhaps be better informed about the requirements for legal entry, and about their fundamental rights and the possible remedies to which they had recourse to legalize their situation.

60. The issue of indigenous peoples, who accounted for 1 per cent of the total population, had clearly been a matter of long-standing concern to the Costa Rican Government, as evidenced by the enactment of various laws and establishment of various bodies since 1939, the most important being CONAI and the Indigenous Act, No. 6172, of 1977. However, it was still necessary to give close attention to the application of the Act in order to overcome remaining deficiencies. He welcomed Costa Rica's ratification of international instruments, including ILO Convention No. 169, and measures adopted in the health and education spheres. Legislation had been slow in finding the right approach but the results achieved in education seemed positive, although continuing efforts were needed. Were there now enough schools for indigenous pupils and did they come up to the communities' "expectations"?

61. Paragraphs 80 et seq. of the report showed that the provisions of the Penal Code, particularly article 371, partially met the requirements of article 4 (a) but he hoped that the Government would inform the Committee of all the provisions of domestic legislation intended to implement fully the obligations under article 4, and that the legislation mentioned by the delegation would appear in the following report so that the Committee could

review it in detail. What had been the results of the application of Act No. 4430 of 1968 on the admission of people of different races to public or private places (para. 89)? Could more information be provided on cases of violations?

62. The information on registration of indigenous peoples in the Civil Registry was instructive with regard to article 5, but he hoped that the next report would give more details of the application of the other rights under that article. With regard to article 6, he asked whether the remedies available to potential victims of racial discrimination, including the Constitutional Court, amparo, habeas corpus and unconstitutionality, had actually been applied with regard to racial discrimination cases. Finally, he hoped that the absence of information on the implementation of article 7 would be made good in the next report.

63. Mr. EANTON said that the written report contained much information that was not relevant to the Convention and hence distracted attention from the absence of vital information. The report showed that Costa Rica had well drafted laws, but not how effective they were in practice; other members had pointed out some of the obvious gaps. He hoped that the next report would explain how well Costa Rica succeeded in delivering the protections it had promised its citizens when it had ratified the Convention.

The meeting rose at 6.05 p.m.